

No. 89-

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States
October Term, 1989

Charles Raymond Dietz, *et ux.*,
Petitioners,

v.

Comptroller of the Treasury,
Income Tax Division,
State of Maryland
Respondents.

**Petition for Writ of Certiorari
to the Court of Special Appeals of Maryland**

**PETITION FOR WRIT OF CERTIORARI
and APPENDIX**

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In Propria Personna



QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Special Appeals deny petitioners' due process of law in violation of the Fourteenth Amendment of the United States Constitution by misconstruing the clear legislative intent of Section 322 of Article 81 of The Annotated Code of Maryland?
2. Did the Court of Special Appeals err in ruling that the issue of due process as raised by petitioners in their appeal to that Court was not reachable because it was "...not fairly generated by the facts of this case." (in Appendix (App.) at 5a), thereby denying petitioners due process of law under the Fourteenth Amendment and under the statute at issue (Article 81, Section 322 of the Annotated Code of Maryland)?

PARTIES TO THIS PROCEEDING

In addition to the parties identified in the caption hereof, the following have been or are parties to this proceeding:

1. J. Joseph Curran, Jr., Attorney General of Md.;
2. Gerald W. Langbaum, Assistant Attorney General;
3. John K. Barry, Assistant Attorney General;

4. Ernest N. Cory, Jr., Attorney, Office of the Compt.;
5. John R. Snowden, Manager, Income Tax Division;
6. David C. Brown, Assistant Director, Legal Units,
Comptroller, State of Md.;
7. J. Edward Malone, Sheriff for Baltimore County,
Md.;
8. Barbara O. Miller, Revenue Agent, Comptroller's
Office, Md.;
9. Suzanne Mensh, Clerk of the Circuit Court for
Baltimore County, Md.

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THIS PROCEEDING	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT	1
OPINIONS BELOW	2
CONSTITUTIONAL PROVISION AND STATUTES INVOLVED	2
STATEMENT OF THE FACTS	2
ARGUMENT	3
1. PERTAINING TO QUESTION 1.	3
2. PERTAINING TO QUESTION 2.	7
SUMMARY AND CONCLUSION	11
APPENDIX	
Opinion of the Court of Special Appeals	
of 25 January 1989	3a
Transcript of the Oral Findings and	
Decision of the Circuit Court for	
Baltimore County, Maryland	
of 4 May 1988	13a

TABLE OF CONTENTS continued

Page

Order of the Court of Appeals of Maryland of 26 May 1989 Denying Appellant's Petition for Writ of Certiorari	39a
Transcript of the (Selected Portions) of the Oral Findings and Decision of the Circuit Court for Baltimore County, Maryland of 20 October 1987	43a
Writ of Execution from Circuit Court for Baltimore County, Maryland of 16 June 1987	53a
Petition for Writ of Certiorari, Maryland Court of Appeals, Case Nos. 767 & 768 of 12 March 1989	57a
Petitioners' Response to the Respondent's Answer to Petition for Writ of Certiorari, Maryland Court of Appeals, Case Nos. 767 & 768 of 29 March 1989	69a
Notice of Petition for Writ of Certiorari	73a
Texts of Statutes from Article 81: The Annotated Code of the Public General Laws of Maryland	79a

TABLE OF AUTHORITIES

Cases	<i>Page</i>
Truett v. Legg 32. Md. 147 at 150	9
United States v. Gilbert Associates, Inc.	
345 U.S. 361 (1953)	10
Hillard v. V. Clark 56 N. H. 155	10

Texts

Cooley, <u>Taxation</u> (4th ed., 1924), 91-92	10
--	----

Constitutional Provisions, Statutes and Rules

United States Constitution,	
Fourteenth Amendment	2,3,4,8
Article 81: The Annotated Code of the Public General	
Laws of Maryland:	
Section 322	2,3,4,5,6,7,8,9,11,12
Section 342	2,5,6,11
United States Code 28, Section 1257(2)	1
United States Code 28, Section 2104	1
Rule 10 of the Supreme Court	1
Rule 12 of the Supreme Court	1



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Comptroller of the Treasury,
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State of Maryland
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**Petition for Writ of Certiorari
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JURISDICTIONAL STATEMENT

Charles Raymond Dietz *et ux.* respectfully appeal from the judgment of the Court of Special Appeals of Maryland in the case of Charles R. Dietz, *et ux.* versus Comptroller of the Treasury, *per curiam*, nos. 767 and 768, 25 January 1989. This Court has appellate jurisdiction under 28 U.S.C., Sections 1257 (2) and 2104 and under rules 10 and 12 of the Rules of this Court. Notice of Petition for Writ of Certiorari was filed with Court of Special Appeals of Maryland on 17 August 1989, see Appendix (App.) hereto at 73a.

OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland of which petitioners seek review is unreported, and is reprinted in the App. at 3a. The opinion of the Circuit Court for Baltimore County, Maryland, which the Court of Special Appeals affirmed, is unreported, and is reprinted in App. at 13a. The order of the Court of Appeals of Maryland, denying petitioners' petition for writ of certiorari, is unreported and is reprinted in App. at 39a.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 81: The Annotated Code of the Public General Laws of Maryland, Sections 322 and 342 which appear in App. at 79a.

STATEMENT OF THE FACTS

In the Circuit Court for Baltimore County, Maryland, respondents (Comptroller - State of Maryland) requested of the Circuit Court an order that Judgment of Condemnation Absolute be entered against a Garnishee for the assets from the sale of the petitioners' residence in satisfaction of the alleged tax indebtedness. Said sale took place at public auction on 16 February 1988. Petitioners had filed a motion to deny the said respondents' request for the condemnation order. The hearing

was held on 4 May 1988 before the Honorable Judge Joseph F. Murphy, Jr. of the Circuit Court for Baltimore County. Upon consideration of the arguments of counsel, Judge Murphy denied the petitioners' motion to vacate the demand for garnishment of property (App. at 27a) and ordered that Judgment of Condemnation Absolute be entered. (App. at 32a). Appellants appealed to the Maryland Court of Special Appeals which Court affirmed the Circuit Court decision on 25 January 1989 (unreported 8-page opinion, reprinted in App. at 3a through 10a). Appellants appealed by Writ of Certiorari to the Court of Appeals which Court on 26 May 1989 in a single page order denied petitioners' petition on grounds that "...there had been no showing that review by certiorari is desirable and in the public interest." (in App. at 39a). Appellants now appeal to this Court.

ARGUMENT

1. PERTAINING TO QUESTION 1.

Let us first address the question of the misconstruing of the statute at issue - i.e. Section 322 of Article 81 of the Annotated Code of Maryland. At the original hearing before Judge Murphy (Circuit Court for Baltimore County) held on 4 May 1989, in his analysis of the statute, Judge Murphy expressed his opinion as follows: "I think the statute clearly makes the final argument identical for purposes of collection to a final, valid, collectible judgment." (lines 5, 6, and 7, transcript of hearing, App. at 29a).

This statement by the Court states the Court's opinion that the taxing statute itself negates petitioners' right to due process because it (the statute) acts as a final, valid and collectible judgment. The term "judgment" as used by the Court in this case obviously refers to a judgment by a court of law. Appellants suggest that such a conclusion - i.e. that the statute itself creates a judgment, is so blatantly violative of the due process provision as to be unthinkable. However, the statute itself speaks loudly and clearly and the Circuit Court's opinion apparently stems from either a misreading of the statute itself or the Court's apparent failure to address Section 322(4) of the statute which is reprinted in its entirety, App. at 80a.

The argument made by counsel for respondents in Judge Murphy's Court hearing was that the provisions of Section 322(3) were controlling. Appellees' emphasis was on the provision contained within the body of this subsection which reads "...such liens shall --- have the full force and effect of a lien of judgment. ..." Counsel for appellees, at this hearing, argued that the statute provided its own built in due process by citing this language of Section 322(3) further noting (correctly) that the language was indistinguishable from similar language in the sales tax law (transcript, lines 14, 15 and 16, App. at 28a) As later indentified by the Court of Special Appeals in their unreported opinion (which will be later referred to) this was appellees' reference to Section 342(b) of Article 81 of the

Annotated Code (App. at 80a) which dealt with sales taxes only - not income taxes which are at issue. It is interesting that both counsel for respondents and the Court of Special Appeals failed to address Section 322(4) of Article 81 of the Annotated Code of Maryland (App. at 80a). Section 322(4) requires the Comptrollers' office to file a court proceeding by way of attachment, execution or otherwise to enforce the lien and/or judgment which he had previously filed and recorded under the provisions of 322(3). It is particularly significant that the Court of Special Appeals, in affirming the Circuit Court decision, agreed with respondents' argument at the Circuit Court level that this fore-quoted wording - i.e. "...full force and effect of a lien of judgment..." was the reason for their affirmation. The Circuit Court accepted Respondents' argument that the wording of Section 322(3) was almost identical to that of the sales tax law - Section 342(b). Petitioners have no dispute with this point. They point out, however, the conclusive and significant omission made by respondents and the Court of Special Appeals - that being the inclusion of the requirement for the filing of a civil proceeding in a Court of Law for attachment or execution under the provisions of Section 322(4) whereas such a requirement is totally absent in the sales tax law (Section 342, App. at 81a through 83a).

The Court of Special Appeals even notes that the statute in question - i.e. Section 322 has never been construed by an

appellate Court in Maryland (App. at 5a), but their reliance on the construance in Liquor Dealers Credit Control, Inc. versus Comptroller which was applicable only to Section 342(b) as indicated in their opinion (App. at 7a) is obviously misplaced in the instant action because they totally fail to address the provisions of Section 322(4). Petitioners call to this Court's attention the other provisions of said Section 322(4) which requires the Court to "... determine the merits of all claims or liens..." and, only following which they may "...decree a sale of the property or rights to property and a distribution of any money or proceeds of sale, according to the interests of parties in the State." Petitioners argue that this requirement for due process contained in Section 322(4) which is absent in the sales tax statute was apparently ignored. This failure to address Section 322(4), glaringly absent from their opinion, (App. at 6a) which contains the provisions requiring due process was an error by the Court of Special Appeals. If, in fact, the Court of Special Appeals is correct in their interpretation that a statute can create due process of law the judicial function essential to the separation of powers doctrine can be usurped at the will of the legislature. Such a conclusion is ludicrous at best and petitioners contend that the very existence of Section 322(4) proves this beyond the shadow of a doubt.

Petitioners further contend that both Judge Murphy (at the Circuit Court level) and the Court of Special Appeals

misunderstood, whether intentionally or otherwise, the results of the hearing of 20 October 1987 before Judge John F. Fader, II of the Circuit Court for Baltimore County, Maryland. Pertinent parts of the transcript of this hearing are included in App. at 43a through 49a and will be referred to in this argument.

2. PERTAINING TO QUESTION 2.

As respects the question of due process, Judge Fader obviously was very concerned that said due process may have been denied petitioners as indicated by his comments on lines 2 and 3 and again on lines 14 and 15, App. at 47a. In acknowledging the existence of Section 322(4), Judge Fader comments, beginning at line 24 (transcript, App. at 44a), "Because the law requires a specific procedure. You send an individual the copy of a notice of lien." Then in the transcript, line 24. (App. at 46a). Judge Fader states: "You know I disagree with Mr. Langbaum that, in fact, there is no question but that this statute (322) requires that Mr. and Mrs. Dietz be made a party to this. Now, I have no question in my mind but that if the statute did not require it, due process of law would require it." Again Judge Fader says (lines 13, 14, 15, App. at 47a) "This is exactly what the statute says. If it didn't say it, due process is going to take over and say it." Petitioners contend that the only decision (if indeed, there was any decision) that came from the hearing in Judge Fader's Court of 20 October 1987 was that the

assessments (of taxes) were final (in line 25, App. at 48a). This, however, is entirely different from a judgment that the petitioners' real property in the form of their residence could be sold to satisfy the assessments. The validity of the assessment has been contended by petitioners who had not and still have never been given a fair hearing as required by the due process clause of the Fourteenth Amendment as well as by Section 322(4) of Article 81 of the Annotated Code of Maryland. Petitioners argue that "the proof of the pudding is in the eating" - Judge Fader issued no written orders whatsoever following the hearing on 20 October 1987. Both Judge Murphy and the Court of Special Appeals erred in ruling that Judge Fader had in fact issued any such order for the sale of the property. There is nothing in writing in the office of the Clerk of the Court to confirm this allegation. The only thing that exists is a docket entry made by the Clerks, but such docket entry was unlawfully made, absent any written order from Judge Fader. Petitioners contend that no due process hearing on the validity of the assessments as required by Sections 332(4) was held in Judge Fader's Court on 20 October 1987 and that the only determination that may have been made (if in fact such determination can be made absent any written order) was for the finality of the assessments. Hence, in addition to the reason previously stated in I, heretofore, the Court of Special Appeals erred in their determination that a money judgment of record

had been issued by Judge Fader. Regardless of how this Court interprets the proceedings at Judge Fader's hearing on 20 October 1987, petitioners call to the attention of this Court that appellees acted on a Writ of Execution dated 16 June 1987 (App. at 53a), 126 days prior to Judge Fader's hearing. This Writ of Execution was issued lacking any prior money judgment of record which was and is required under the provisions of Section 322(4) and the Sheriff proceeded to post the residence of the petitioners preparatory to sale.

The following case is very explicit regarding judgment and the required court action:

TRUETT V. LEGG 32 Md. 147 at 150

The judgment rendered on the verdict is the conclusion of the law upon the fact found by the jury, and is the act of the Court, and the clerk in entering it, records it as the judgment of the court, and has no authority to enter it without the sanction of the court. After the judgment becomes final and not before, execution may be issued against the defendant, but in order to charge him in execution, or bind his property or proceed against him by action of debt, or have *scire facias* on the judgment, it is necessary that the judgment should be entered of record. 2 Tidd's Pr. 964, 975. The record in this case shows no such judgment and therefore the execution was improvidently issued, and was properly quashed by the court.

In the case of **UNITED STATES V. GILBERT ASSOCIATES, INC.** 345 U.S. 361 (1953), the Court addressed the question of whether the Town of Walpole, New Hampshire, which had made a tax assessment on certain property of a corporation, was a judgment creditor under New Hampshire law which established that the tax assessments are "...in the nature of a judgment." The Court stated:

"We conclude that whatever the tax proceedings that the Town of Walpole may amount to for the purpose of the State of New Hampshire they were not such proceedings as resulted in making the Town a judgment creditor within the meaning of Section 3672."

The Court further stated:

"As is usual in cases like this, the Town asserts that its lien is a perfected and specific lien which is impliedly excepted from this statute. This Court has never actually held that there is such an exception. Once again, we find it unnecessary to meet this issue because the lien asserted here does not raise the question."

The decision of **HILLARD v. V. CLARK**, 56 N. H. 155, holds that an assessment is not a judgment.

Cooley, Taxation (4th ed., 1924), 91-92, points out that assessments, though they may be enough like judgments to definitely establish a demand for taxes, are not technical judgments.

SUMMARY AND CONCLUSION

Petitioners have consistently and persistently attempted to challenge the validity of the tax assessments in a Court of Law in accordance with the provisions of Section 322(4) of Article 81 of the Annotated Code of Maryland. Petitioners have been denied due process of law through a failure by the Court of Special Appeals to recognize or address the due process requirements of Section 322(4) of the statute at issue. The hearing before Judge Fader on 20 October 1987 in the Circuit Court for Baltimore County, Maryland did not result in the issuance of any money judgment of record upon which the valid issuance of a writ of execution could be based. This lack of a money judgment from Judge Fader's court is immaterial and irrelevant in any event because the Writ of Execution was unlawfully issued 126 days previously without any money judgment of record. Both Judge Murphy at the subsequent hearing on 4 May 1988 in the Circuit Court for Baltimore County, Maryland and the Court of Special Appeals in their (unreported) decision of 25 January 1989 failed to properly construe the statute in question, -- Section 322(4). Their failure is predicated upon an improper comparison with a sales tax statute (Section 342 of Article 81, The Annotated Code of Maryland) which contains no such similar due process provisions as contained in Section 322(4). Additionally, both Judge Murphy and The Court of Special Appeals erred in accepting a clerk's docket entry in the Clerk's Office of the

Circuit Court for Baltimore County as evidence of the existence of a money judgment from Judge John F. Fader, II when such a money judgment had never been issued.

In conclusion, it is respectfully requested of the Court that:

1. The affirmation by the Court of Special Appeals be reversed
2. The petitioners be granted a hearing on their long-standing challenge to the validity of the assessments in accordance with the due process provisions of the Fourteenth Amendment and the Section 322(4) of Article 81: Annotated Code of Maryland
3. The unlawful sale of petitioners' home be rescinded and/or resolved
4. The unlawful Writ of Execution issued 16 June 1987 be declared nul and void ab initio

Respectfully submitted,

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APPENDIX

**OPINION OF THE COURT OF
SPECIAL APPEALS OF MARYLAND
OF 25 JANUARY, 1989**

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 767 & 768
September Term, 1988

CHARLES R. DIETZ, ET UX.

v.

COMPTROLLER OF THE TREASURY

Moylan,
Bishop,
Getty, James S., (Retired,
Specially Assigned), JJ.

PER CURIAM

Filed: January 25, 1989

Appellants, Charles R. and Ethel M. Dietz, appeal from orders of the Circuit Court for Baltimore County (Joseph F. Murphy, Jr., J.) granting Judgment of Condemnation Absolute in favor of appellee, State of Maryland Comptroller of the Treasury (Comptroller), and denying appellants' Motion to Vacate Demand for Garnishment of Property.

FACTS

The Comptroller filed tax liens against the appellants for unpaid income tax and accrued interest and penalties for 1983 and for 1985¹. The Sheriff of Baltimore County, as garnishee, sold appellants' residence pursuant to the Comptroller's execution on these liens. The Comptroller then filed writs of garnishments against appellants and the Sheriff for the proceeds from the sale of appellants' home. The Sheriff confessed judgment on these proceeds and the Comptroller moved for judgments of condemnation absolute on its liens.² These were granted (William R. Buchanan, Jr., J.). These orders were vacated on April 25, 1988 (William N.

¹ A third lien was filed on July 25, 1987 for unpaid tax and accrued interest and penalties thereon from 1986. That lien, however, is not at issue in this case because it was not entered on the trial court's docket for May 4, 1988, and therefore not addressed in the court's order.

² The liens for 1983 and 1985 were assessed as final by Judge John F. Fader on October 20, 1987, as he denied appellants' motion to release their property from levy. This decision was entered on the docket.

Nickerson, J.) in consideration of appellants' motion to vacate and request for a hearing. A hearing on both liens was held before Judge Murphy, at the conclusion of which he denied appellants' motions to vacate the Comptroller's demands for garnishment, and granted the Comptroller motions for judgment of condemnation absolute. Appellants noted this timely appeal.

In resolving this appeal we will address the following issue:

Whether the trial court properly granted
Judgment of Condemnation Absolute on
appellants' assets confessed in garnishment.

We will not reach the due process issue which appellants have raised because it is not fairly generated by the facts of this case.

The Judgment of Condemnation Absolute

The authority for income tax liens is provided by MD. ANN. CODE art. 81, sect. 322 (1957, 1980),³ of the Revenue and Taxes subtitle, which states:

Tax a lien in favor of State on all property,
salary and wages of delinquent taxpayer.

³This article has been repealed and transferred to MD. TAX GEN. CODE ANN. (1988 Repl. Vol.), effective January 1, 1989, after this action was instituted. Section 322, as well as sect. 342 which will be discussed prospectively, are now effectively consolidated and wholly encompassed within sect. 13-805-13-810 of the "Collections" subtitle. See 1988 Laws of Maryland, ch. 2 sect. 1, 16, ch. 110 sect. 1, ch. 549 sect. 1, and ch. 643 sect. 2.

(1) Lien for amount, penalty and interest. - If any taxpayer shall fail to pay any tax or any installment of any tax due under this subtitle, on or before the date fixed for its payment, the full amount of all such tax due the State, together with any interest, penalty, additional amount or addition to said tax, including in each case a delinquent fee of five dollars (\$5.00), shall be a lien in favor of the State upon all property and all rights to property, real or personal, belonging to such person.

(2) Time lien arises. - Unless another date is specified by law, the lien arising at the date of nonpayment as in this section specified and provided for, shall continue until the liability for the amount thereof is satisfied or until the Comptroller, in his discretion, shall release the lien because of lapse of time or because such lien is uncollectible.

(3) Notice and judgment. - Notice of such lien may be filed by the Comptroller with the clerk of the circuit court of the county in which said property is located [...]. From the time such lien is filed with the clerk of the court of the jurisdiction in which the property covered by the lien is located and indexed as herein prescribed, such lien shall be superior to that of any subsequent mortgages [mortgagee], pledges [pledgee], purchaser or judgment creditor and shall have the full force and effect of lien of judgment. The lien of any mortgagee, pledgee, purchaser or judgment creditor which became perfected as against third persons, prior to the filing of notice of the State's lien with the clerk, shall be preferred to the lien of the State, provided that such mortgagee, pledgee, purchaser or judgment creditor took and perfected his lien without actual notice or knowledge of the existence of the lien of the State.

As the Comptroller notes, although this provision has never been construed by an appellate court in Maryland, a similar provision which applies to sales tax, sect. 342 (b) of Article 81, has been construed.⁴ That section provides:

(b) Lien. - The tax, and all increases, interests and penalties thereon shall be a lien upon all property, real and/or personal, of any person liable to pay the same to the State from and after the time when notice has been given that such tax has become due and payable as provided herein. Notice of such lien shall be filed by the Comptroller with the clerk of the circuit court of the county in which said property is located[.]... The lien provided for in this section shall have the full force and effect of a lien of judgment. Unless another date is specified by law, the lien arising at the date of nonpayment as in this section specified and provided for, shall continue with the same force and effect as a judgment lien. Any such lien on personal property shall not be effective as against an innocent purchaser for value unless the personal property has been levied upon by an officer of a court.

Id. at sect. 342 (1957), 1980).

In Liquor Dealers Credit Control, Inc. v. Comptroller, 241 Md. 656, 660-61 (1966), the Court of Appeals explained:

⁴The consolidation of sect. 322 and 342 under new sect. 13-805-13-810 supports our reliance in this case on cases construing sect. 342.

The statutory clause [sect. 342 (b)] giving the lien "the full force and effect of a lien of judgment", had the effect, not of requiring the lien creditor to issue an execution in order to perfect its tax lien, but of giving the lien entered on the judgment docket the same force and effect as the lien of a judgment on which an execution had been issued.

Appellants are correct that under Maryland Rule 2-641 a court judgment is required for the execution of a lien upon property; however, a lien under either sect. 322 or sect. 342 does not require that the Comptroller file for a writ of execution before levying. The plain language of those sections provides that the lien itself has the same effect as a writ of execution. See Liquor Dealers.

Appellants do not dispute either the existence of the Comptroller's liens or the fact that Judge Fader finally assessed these liens. The premise of their argument is that a final assessment of a lien in favor of the State in the context of a denial of a motion to release property from levy is not the same as a finding of debt and issuance of a writ of execution. Under the facts of this case, we find no material difference. Permission to levy upon property is permission to sell it in satisfaction of a debt. A final assessment of a lien is an affirmation of its validity, and in the context of a denial to release the property from levy, it is an authorization to sell the property to satisfy the lien. The effect is exactly the same as if the creditor obtained a final determination from a court that a debt is owing and a writ of execution to sell property in order to satisfy the debt from the sale proceeds. In Howard County v. Allnutt, Inc., 74 Md. App. 422, 426 (1988) we explained this very point in the context of the State's filing of a sales tax lien, stating:

In short, the filing of a sales tax lien by the State is the equivalent of any other creditor's filing a claim, reducing it to judgment and issuing

execution or garnishment thereon. The tax lien is ipso facto a judgment and an execution on the judgment. Hence, it acquires priority over any executions or garnishments made by other creditors subsequent to the entry of the tax lien.

This was the essence of Judge Murphy's reasoning in granting the Comptroller's motions for judgment of condemnation absolute on the proceeds from the sale of appellants' home. He found specifically that the entry of Judge Fader's order on the docket, finally assessing the liens and denying the motion to release the property from levy, authorized the sale of the property. The fact that Judge Fader had not signed an order which the Comptroller had submitted for sale within 90 days was not critical.

Recently, in Ridgewood Log Homes, Inc. v. Comptroller of the Treasury, No. 368, slip op. (December 5, 1988), we acknowledged the Comptroller's discretion to assess use tax pursuant to its authority under former Article 81, sect. 372 (b) against the in-state representative of a foreign vendor. We said:

The term 'discretion' involves the idea of choice, of an existence of the will, of a determination made between competing considerations. In order to have an 'abuse' in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. Wendel v. Swanberg, 185 N.W.2d 348, 351 (Mich. 1971) (quoting, Spalding v. Spalding, 94 N.W.2d 810, 811-12 (1959). See also People v. Sawicki, 145 N.W.2d 236, 239 (Mich. App. 1966).

Id. at 12.

We hold that, based on Liquor Dealers, the tax liens themselves satisfied the judgment requirements under sect. 322. The Comptroller did not abuse his discretion in the procedures he followed and the trial court did not err in granting condemnation absolute on the funds.

JUDGEMENT AFFIRMED;
COSTS TO BE PAID BY
APPELLANTS.

**TRANSCRIPT OF THE ORAL FINDINGS
AND DECISION OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND
OF 4 MAY, 1988**

STATE OF MARYLAND
COMPTROLLER OF THE
TREASURY
INCOME TAX DIVISION

VS.

C. RAYMOND DIETZ &
ETHEL M. DIETZ

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* MARYLAND
* Case Nos.: 88-CG-1111 &
* 88-CG-1112

* * * * *

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEDURES

Towson, Maryland
May 4, 1988

Before:

HONORABLE JOSEPH F. MURPHY, JR., ASSOCIATE JUDGE

APPEARANCES

On Behalf of the State:
GERALD LANGBAUM, ESQUIRE

On Behalf of the Defendants:
KENNETH KOPPENHOEFER, ESQUIRE

Reported by:

PATRICIA A. CIRASOLE
Official Court Reporter
401 Bosley Avenue, M-11
Towson, Maryland 21204

1 PROCEEDINGS

2 THE COURT: State of Maryland versus Dietz.

3 Ready to proceed?

4 MR. KOPPENHOEFER: Yes, Your Honor. For the
5 record, for Mr. Dietz, Kenneth Koppenhoefer. I filed an
6 entry of appearance on Monday. I don't know whether the
7 docket had already, the file had already been sent to your
8 chambers or whether it's in there.

9 THE COURT: It's in the file.

10 MR. KOPPENHOEFER: For the record, I am
11 representing Mr. Dietz this morning.

12 THE COURT: All right. We ready to proceed?

13 MR. KOPPENHOEFER: I am ready to proceed, Your
14 Honor.

15 MR. LANGBAUM: Gerald Langbaum for the State
16 of Maryland Comptroller of the Treasury, Income Tax
17 Division. I am prepared, Your Honor.

18 THE COURT: Let's go.

19 MR. KOPPENHOEFER: On behalf of Mr. Dietz,
20 Your Honor, there have been written pleadings filed. I
21 would call Your Honor's attention to the order signed by
22 Judge Nickerson on April 5th, which I would argue has some
23 importance and relevance to this proceedings, since, as I
24 read it, Judge Nickerson ordered that the order for
25 condemnation absolute be vacated pending not only this

1 morning's hearing but a related piece of litigation. I
2 believe 88-CG-1139. I am sure Your Honor will read that and
3 give due consideration, but that's Plaintiff's argument,
4 that is the import of Judge Nickerson's order.

5 Additionally, Your Honor, I think the sum and
6 substance of Mr. Dietz's argument is that the procedures
7 that the State has undertaken in these matters have gone
8 beyond what the scope of the law, the statutory law and the
9 Maryland rules have permitted.

10 What we would submit, Your Honor, what the State
11 has in this case is a tax lien. They have tried to pursue
12 remedies that are only available to judgment creditors,
13 though, who have money judgments as a result of orders
14 issued by either the District Court of Maryland for
15 particular jurisdiction or the Court of general jurisdiction
16 for a particular jurisdiction, the Circuit Court. And in
17 fact, in the answer filed by the Comptroller this morning,
18 they have repeatedly referred to, they have a judgment, they
19 have a judgment. We disagree with that as a matter of law,
20 Your Honor. We say what they have is an assessment. They
21 may have a final assessment and they may have the remedies
22 that are available to one who has a tax assessment to place
23 a tax lien to cloud title of the property. But that's not
24 what they are doing here. They are going far beyond that.
25 They are asking Your Honor to sign an order for condemnation

1 absolute, allowing time to take moneys which are in the
2 hands of the garnishee as a result of a sale of property,
3 which is a remedy which is maybe available to a judgment
4 creditor.

5 THE COURT: Why isn't it available to the
6 State in this case?

7 MR. KOPPENHOEFER: Becasue they don't have a
8 money judgment within the meaning of the law. They have an
9 assessment; they filed it in the court; it had a Maryland
10 tax lien number. But it, my client's argument is that that
11 is not a money judgment that would allow them to take the
12 action that they have taken or would allow them to seek the
13 remedy they seek from Your Honor this morning, which is an
14 order for condemnation absolute.

15 Basically, our argument is that that sort of remedy
16 is specifically provided in the law for orders issued out
17 from the District Court or Circuit Court.

18 THE COURT: Is there any prohibition against
19 use of it the way the State wishes to?

20 MR. KOPPENHOEFER: I would argue the burden is
21 on them, Your Honor. It's very drastic measure to take
22 somebody's house, to take somebody's family residence and
23 sell it out from under them and they should be obligated to
24 show why they can do it.

25 THE COURT: Fair enough. Why is it you are

1 entitled to proceed as if you have a money judgment in the
2 court against the debtors here.

3 MR LANGBAUM: Because the Maryland
4 legislature has so provided, Your Honor. Article 81 Section
5 322 Subsection 3, the General Assembly has said that a tax
6 assessment, when final and recorded with the Clerk, shall
7 have the full force and effect of a lien of judgment. So we
8 are no different than Hecht Company that has obtained a
9 monetary judgment.

10 I might also add, Your Honor, two things. One,
11 this precise point was litigated in October before Judge
12 Fader of this Court and Judge Fader made the same specific
13 finding that.

14 THE COURT: Wait a minute, was this case
15 argued before Judge Fader?

16 MR. LANGBAUM: Your Honor, yes. The answer to
17 that is yes. This case has taken a torturous path to get
18 here, Your Honor. It probably would be appropriate for me
19 to give you a brief chronology, although it can't be too
20 brief, Your Honor. And I think I'd like to do that. First
21 of all --

22 THE COURT: The problem I'm having is, I don't
23 see anything on the docket entries that reflects a decision
24 by Judge Fader.

25 MR. LANGBAUM: On October 20, 1987.

1 THE COURT: In Case Number 1111. No. Two,
2 the first entry here is March 1, 1988.

3 MR. LANGBAUM: Well, all right. Let me give
4 my chronology, Your Honor.

5 THE COURT: There's another case that I need
6 to look at. What case number is that?

7 MR. LANGBAUM: It would probably be 1112.

8 THE COURT: All right. Let me look at that.
9 What case did Judge Fader decide?

10 MR. LANGBAUM: Judge Fader ruled upon a motion
11 filed by Mr. Dietz to set aside a levy, the same levy that's
12 before the Court today.

13 THE COURT: Can you give me the case number of
14 that case? Maybe Judge Fader's decision is the law of the
15 case. If it is, then there isn't much I can do about it.
16 Maybe is isn't, and then if it isn't, we'll have to at least
17 try to figure out what the appropriate disposition of this
18 motion before me ought to be.

19 MR. LANGBAUM: MTL, which is Maryland Tax Lien
20 docket 48, Page 222.

21 THE COURT: That doesn't help me at all. I
22 need the case that was decided in this Court; the case must
23 be in our Clerk's Office in this court.

24 MR. LANGBAUM: That is the number in the
25 Clerk's Office, Your Honor. That is the number in the

1 Clerk's Office. There is a tax lien docket. When we record
2 a lien, it's given a docket and a page number.

3 THE COURT: What's the case number that you
4 were mentioning, Mr. Koppenhoefer?

5 MR. KOPPENHOEFER: 88-CG-1111 and 1112. The
6 other case I mentioned is 88-CG-1139.

7 THE COURT: What case is that number, 1139? I
8 apologize.

9 MR. LANGBAUM: That's an objection filed by
10 Mr. Dietz. Where I see it comes into play here is the order
11 that Judge Nickerson signed. It was in that context that I
12 raised it, Your Honor.

13 THE COURT: You are telling me that Judge
14 Fader has already decided this issue?

15 MR. LANGBAUM: Yes, Your Honor, he has.

16 MR. KOPPENHOEFER: Incidentally, Your Honor,
17 we totally disagree with that.

18 THE COURT: Well, I'd kind of like to see the
19 file because maybe there's an entry in there that disposes
20 of that.

21 MR. LANGBAUM: I can probably show you the
22 entry, Your Honor.

23 THE COURT: Let's just sit back for a minute.
24 Let me get rid of the other violation of probation case.
25 Let me get those files. Perhaps, Counsel, you can speak to

1 Mr. Crawford here and try to identify where it is we can go
2 look for those. Then we'll continue on with the Dietz case.

3 000

4 (There was a pause in the proceedings.)

5 000

6 THE COURT: All right, we have located the
7 file.

8 MR. LANGBAUM: It has a docket number, I
9 believe, of MTL 48-222 and another similar number I believe
10 is MTL 50-247. That's a separate docket that the Clerk's
11 Office maintains, Your Honor, for Maryland tax liens, MTL.
12 And in fact what happened is that the Comptroller recorded
13 the liens at MTL 48-222 and MTL 50-247.

14 THE COURT: There's a docket entry, October
15 20th, 1987, Judge Fader. Defendants', and these are Mr. and
16 Mrs. Dietz, Motion for Release of Property from Levy and
17 Petition for Injunction denied; Court determines that the
18 1983 and 1985 assessments are final. Sounds to me like he's
19 ruled on the very motion that's being brought in this case.

20 MR. KOPPENHOEFER: Well, I would argue not,
21 Your Honor, because what we are talking about is the
22 Comptroller is seeking to have Your Honor sign an order for
23 the condemnation absolute of assets. We would note here,
24 though there was an order submitted which stated that Judge
25 Fader orders that the property be sold within 90 days and

1 Judge Fader refused to sign that order in a margin note.
2 The only thing he stated in that docket entry is that the
3 assessments are final.

4 THE COURT: I am looking at this. He said,
5 Court declines to sign, docket entry and decision of
6 10-20-87 is sufficient. He just didn't sign that order.

7 MR. KOPPENHOEFER: That's correct, but there's
8 nothing in the docket entry that would authorize the State
9 to either sell the house or receive the assets from the
10 garnishee. That's our argument, Your Honor.

11 THE COURT: As I read it, he denied the motion
12 for release of property. That operative decision means that
13 the property can be sold.

14 MR. LANGBAUM: And, in fact, it was, Your
15 Honor. The property was sold and, I guess at this point we
16 really have to specify why we are here today.

17 Mr. Koppenhoefer has said on two occasions that we
18 are here because I am asking Your Honor to sign an order
19 granting judgment condemnation absolute. Until the 25th of
20 April, I would not have had any need to ask you to do that,
21 because such an order had been signed by Judge Buchanan.
22 But on the 25th of April, Judge Nickerson recinded those
23 orders.

24 THE COURT: What was the basis of his
25 decision?

1 MR. LANGBAUM: The basis of his decision was
2 to create a holding pattern. Mr. Dietz had filed a motion
3 to vacate demand for garnishment of property. He followed
4 that up with another motion to set aside Judge Buchanan's
5 orders. He also has filed a motion to, he didn't file a
6 motion, he wrote a letter that the Clerk treated as a motion
7 to set aside some earlier orders signed by Judge Turnbull,
8 extending the time within which the sale could occur.

9 Now, admittedly, I am not certain precisely what is
10 before you today. But I am certain what the status should
11 be when we leave here today. And that status should be that
12 all open motions filed by Mr. Dietz should be denied and
13 this Court should reinstate the order of judgment
14 condemnation absolute so that the Sheriff of Baltimore
15 County, as garnishee, who has made this sale and is sitting
16 with 56 thousand dollars in his bank account, can pay the
17 State what is owed to the State, and do whatever he does
18 with the rest of it, which presumably is send it back to Mr.
19 Dietz, so Mr. Dietz can keep it and use it not to pay
20 subsequent years taxes.

21 THE COURT: Did that precede Judge Nickerson's
22 April 25th, 1988 ruling?

23 MR. LANGBAUM: No, there was not.

24 MR. KOPPENHOEFER: But I would state, Your
25 Honor, Judge Nickerson's order says what it says. It says

1 in addition to vacating Judge Buchanan's order, that the
2 money --

3 THE COURT: Did you take this to Judge
4 Nickerson and present it to him?

5 MR. KOPPENHOEFER: I was not involved in that
6 stage.

7 THE COURT: Who presented it to Judge
8 Nickerson?

9 MR. LANGBAUM: Most assuredly not me.

10 THE COURT: I mean, why wouldn't somebody have
11 gone back to Judge Buchanan and asked him to vacate his
12 order?

13 MR. LANGBAUM: Well, Your Honor, a review of
14 his file would indicate Mr. Dietz tends not to pay much heed
15 to do what the rules do require. He hasn't followed one
16 yet. It wouldn't start in an --

17 MR. KOPPENHOEFER: I think that's somewhat
18 gratuitous, Your Honor.

19 THE COURT: It really doesn't matter to me.
20 I'll rule on what is before me. But if somebody walks into
21 my chambers asking me to vacate an order signed by Judge
22 Buchanan, I send them to Judge Buchanan first. If he
23 happens not to be around or if there's a problem, I act on
24 it. Likewise, I am now being asked to vacate an order
25 entered by Judge Nickerson. It's a little bit different, we

1 are here in open court, there's a record being made of this
2 thing. The assignment office has assigned it to me. But
3 had somebody walked in my chambers and said, please consider
4 this motion to vacate Judge Nickerson's order, I would have
5 sent them upstairs to Judge Nickerson first.

6 MR. KOPPENHOEFER: May well be, but Judge
7 Nickerson did not, and I would say that this order should not
8 be vacated by --

9 THE COURT: What relief are you seeking from
10 me this morning?

11 MR. KOPPENHOEFER: Well, we are seeking that
12 the Motion for Judgment Condemnation Absolute not be signed.
13 I don't know -- We do have an order, Mr. Dietz filed this
14 and attached an order. Ironically, it's the same order
15 Judge Nickerson signed. So I suppose as far as positive
16 action, it seems that Mr. Dietz's relief has been granted by
17 Judge Nickerson. I admit it's a somewhat curious situation,
18 but --

19 MR. LANGBAUM: May I be heard on that point?

20 THE COURT: Yes.

21 MR. LANGBAUM: At this time I'd like to submit
22 to the Clerk for filing an answer to the motion to vacate
23 the garnishment. I have hand delivered a copy to Mr.
24 Koppenhoefer earlier this morning. Judge Nickerson's order
25 was wrong in two respects. It never should have been

1 signed, Your Honor.

2 Firstly, this is a garnishment proceeding. It's a
3 basic rule, and the cases that so hold are Fico versus
4 Ghinger and Gorn versus Kolker, both of which are cited in
5 that answer, that in a garnishment proceeding, the judgment
6 debtor cannot challenge the underlying judgment. That is
7 what Mr. Dietz seeks to challenge. He says, I don't owe
8 these taxes, I am something special, I don't have to pay the
9 State of Maryland taxes. Now, that cannot be raised in the
10 garnishment proceedings. He tried to raise it in front of
11 Judge Fader in October. Judge Fader heard him out and said,
12 no, I am not going to disturb the underlying judgment.
13 Those assessments are final, state law says that they have
14 the same forces and effect as a lien of judgment, therefore,
15 we are free to proceed the same way Hecht Company can when
16 they get a judgment. That's why we proceed with the sale.

17 Now, Mr. Dietz has filed a second motion and this
18 motion, I will concede, has technical merit. He noted that
19 while he had 30 days in which to object to the garnishment,
20 Judge Buchanan signed an order on the 29th day granting
21 condemnation absolute. He was a day off.

22 THE COURT: That's probably why Judge
23 Nickerson acted the way de did.

24 MR. LANGBAUM: Well, perhaps it is, Your
25 Honor, but I would also state, he certainly overstepped

1 himself by incorporating into this order any reference to
2 the petition for declaratory relief. That's a separate
3 action in which Mr. Dietz has filed a suit naming as
4 Defendant essentially anyone in state government who has had
5 anything to do with this case since its inception. I am a
6 Defendant in that case.

7 THE COURT: There's technical merit to what he
8 said. Judge Nickerson vacated Judge Buchanan's order
9 because it was prematurely signed. It seems to me we are
10 back to square one, whether I ought to sign the order or an
11 identical order, identical to the one Judge Buchanan signed
12 on the 30th of March. That's where we are.

13 MR. LANGBAUM: Okay.

14 THE COURT: You say I shouldn't do that
15 because what they have here is a final assessment and not a
16 judgment.

17 MR. KOPPENHOEFER: I would say additionally
18 --

19 THE COURT: What about Article 81 Section
20 322(3)?

21 MR. KOPPENHOEFER: I have read that statutory
22 section. I think Your Honor would have to decide what the
23 term, lien of judgment, refers to. I was unable to
24 enlighten myself with, or Your Honor, with case law on that.
25 I would just say, I would just say that as a matter of

1 policy, that these tax assessments deny the Respondents
2 certain fundamental rights, such as a right to a Jury trial
3 and the burden of proof. And, therefore, without some very
4 specific language in Section 322, more specific than the
5 language in there, that Your Honor should not read it the
6 way that Mr. Langbaum is asking you to read it.

7 Additionally, I would argue that Judge Nickerson's
8 order, whatever one might conjecture that it meant, Judge
9 Nickerson is a, you know, certainly, a learned and capable
10 Judge and experienced practitioner at the Bar, and he would
11 have been fully capable of scratching out any impertinent
12 parts of that order. He signed it in to to. I think Your
13 Honor should assume that he read the order and that he
14 accomplished by signing that order what it says.

15 THE COURT: It says, pending a determination
16 by this Court on the validity and/or merits of the alleged
17 Judgment Debtors' motion to vacate, that's what we are here
18 on now. So we are given effect to this because all of this
19 was pending the decision which I am now going to make.

20 MR. KOPPENHOEFER: Certainly, Your Honor, just
21 to finish that sentence. And the suit case number
22 88-CG-1193, et cetera, filed March 8, 1988, filed Petition
23 for Declaratory Relief.

24 THE COURT: To that extent, I am vacating
25 Judge Nickerson's order. I am disposing of the matters

1 today. That other case can follow its own course.

2 MR. KOPPENHOEFER: I wanted to cover that for
3 the record. Certainly, I would say to get back to the main
4 point, Section 322 does not utilize the type of exact and
5 specific language that would be required, given the
6 deprivation of important rights that my clients have
7 suffered as a result of the tax assessment procedure. And I
8 would grant that that's a policy argument rather than a case
9 law argument, but that is what I am going to submit for Your
10 Honor's consideration.

11 THE COURT: Thank you.

12 MR. KOPPENHOEFER: Thank you.

13 MR. LANGBAUM: Your Honor, I can shed some
14 case law light on that point. The language of Section
15 322(3) is indistinguishable from similar language in the
16 sales tax law. And the language in the sales tax was
17 less than two months ago construed by the Court of Special
18 Appeals in a reported decision, Howard County versus Alnut,
19 as saying that the lien created by the tax laws are no
20 different than the lien created by any, favor any other
21 Judgment Creditor.

22 THE COURT: I agree with that.

23 MR. LANGBAUM: Okay. Thank you, Your Honor.

24 THE COURT: In that case, I believe I have
25 said all that I need to say.

1 MR. KOPPENHOEFER: Your Honor has do sided?

2 THE COURT: Yes, it's a matter of statutory
3 interpretation. I understand your arguments, I appreciate
4 it. I simply don't think that your position is the right
5 one. I think the statute clearly makes the final argument
6 identical for purpose of collection to a final, valid,
7 collectible judgment.

8 MR. KOPPENHOEFER: Thank you, Your Honor.

9 THE COURT: Any other interpretation seems to
10 me to be just so strained, it's unfair to interpret it in
11 any way other than the way I have interpreted.

12 MR. LANGBAUM: Your Honor, in the hope and
13 expectation I might add that the Court would so rule today,
14 I had prepared orders that I think from the Court's comments
15 it would be prepared to sign.

16 THE COURT: Well, show them to counsel and let
17 me hear Mr. Koppenhoefer's comments.

18 MR. LANGBAUM: I have one order that says
19 simply the matter having come before the Court, the parties
20 having been heard and the premises been considered, this is
21 this blank day of 1988 by the Circuit Court for Baltimore
22 county ordered that the three orders of this Court dated
23 April 25, 1988, signed by the Honorable William N. Nickerson
24 be and the said orders hereby and are rescinded.

25 THE COURT: I don't really know that is what

1 we ought to do. Why should we rescind the order? What does
2 that do? Give operative effect to Judge Buchanan's order
3 which was prematurely signed. Why don't you present another
4 order for me identical to the one Judge Buchanan signed and
5 we can do it that way.

6 MR. LANGBAUM: I have three such orders, Your
7 Honor.

8 THE COURT: All right.

9 MR. LANGBAUM: For reasons that are not
10 entirely clear to me, the Judgment Condemnation Absolute was
11 actually entered in three separate orders and Judge
12 Nickerson vacated them in three separate orders. But the
13 language in the orders I have just given you doesn't
14 reinstate, it enters Judgment Condemnation Absolute in favor
15 of the Comptroller in each of those three cases.

16 MR. KOPPENHOEFER: Your Honor, I'm somewhat at
17 a lose to understand why there are three instead of two. My
18 understanding is that there were only, we were doing with
19 1111 and 1112.

20 THE COURT: That's right.

21 MR. KOPPENHOEFER: I don't understand the
22 numbering and I don't understand why there are three orders.
23 That's my problem with the form of the orders. Obviously,
24 we disagree with the substance, but I would leave that for
25 Your Honor to decide.

1 MR. LANGBAUM: There were three orders signed
2 by Judge Buchanan.

3 THE COURT: Well there's only two of them
4 before me. One is case number 311, the other is case number
5 312.

6 MR. LANGBAUM: 311 and 312?

7 THE COURT: That's the only thing on my
8 assignment this morning.

9 MR. LANGBAUM: Judge Buchanan on March 30 also
10 signed an order of Judgment Condemnation Absolute in number
11 313 and that was vacated by Judge Nickerson on April 25. It
12 all, I can't --

13 THE COURT: I said 311, what I meant was
14 88-CG-1111 and 88-CG-1112.

15 MR. LANGBAUM: Okay. Yes. Those two were
16 specifically before Judge Fader and were two of the three
17 that Judge Buchanan signed and Judge Nickerson vacated. So
18 there is a difference in the posture between 1113 and the
19 other two. 1111 and 1112 I think are clear and you should
20 sign those orders granting condemnation absolute. 1113 is
21 different in that, only in that it didn't go before Judge
22 Fader, but I can state, Your Honor, that the record will
23 show that there is a lien duly recorded at Docket 534, Folio
24 353, Folio 313. Garnishment was duly served on the Sheriff;
25 the Sheriff has duly confessed the assets. There is no

1 reason, therefore, that this Court ought not to sign an
2 order granting condemnation absolute in 1113. Just briefly
3 Your Honor, I don't think Your Honor should sign any orders
4 without it being duly before Your Honor.

5 THE COURT: I agree with that. I don't know
6 why it wasn't put in here, but I am not going to go beyond,
7 start reaching down for files and signing orders in cases
8 that aren't assigned to me.

9 MR. LANGBAUM: So, Your Honor, you have
10 indicated you will sign the orders that grant condemnation
11 absolute in 1111 and 1112, is that right?

12 MR. KOPPENHOEFER: For the record, Your Honor,
13 these all look like they are numbered 1111, 1112 to me. I
14 believe they may have been misnumbered on that.

15 THE COURT: Hold on a minute. Just hold on a
16 minute.

17 MR. LANGBAUM: All right.

18 (There was a pause in the proceedings.)

19 THE COURT: Case number 1112 involves the
20 amount \$7,428.31. I have just signed that order. Case
21 number 1111 involves \$1,948.73. I am signing that order.

22 THE COURT: And I have written the appropriate
23 designation concerning docket, folio, liber, page on the
24 file or on the order I have signed.

25 MR. LANGBAUM: Your Honor, may I speak to

1 1113?

2 THE COURT: Go ahead.

3 MR. LANGBAUM: If I can locate in the Clerk's
4 Office a third file which should be Liber 50, MTL 56, Page
5 50, and you can find either in that file or in one of the
6 files already before you a Motion for Judgment Condemnation
7 Absolute, a confession of assets by the Sheriff. Would the
8 Court then in view of its rulings on the two earlier cases
9 sign the third order in 1113?

10 MR. LANGBAUM: That file does exist, the lien
11 was filed.

12 THE COURT: I am certain it does exist. But
13 notice had been given that the cases that I have acted on
14 will be on this morning's docket. In the file was a request
15 for postponement filed by Mr. Dietz before counsel got into
16 this case on his behalf. That was denied.

17 Now, under the circumstances, I do think it would
18 be a bit unfair for us to add additional cases to today's
19 assignment. It isn't that I am not interested in
20 expeditiously disposing of all of this stuff. It's just
21 that while I agree with you, my position isn't going to
22 change at all. Since that case isn't on the assignment
23 today, I am not going to go downstairs and hunt through
24 anything that might apply to this issue. Perhaps another
25 Judge will see it differently. Maybe another Judge would

1 interpret that section differently.

2 MR. LANGBAUM: I'll just ask for a hearing on
3 1113.

4 THE COURT: Just try to get a hearing as soon
5 as possible. I do order, to the extent that my orders mean
6 anything down in the assignment office, that it be
7 expeditiously placed in as soon as possible.

8 MR. LANGBAUM: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. KOPPENHOEFER: Thank you, Your Honor.

11 THE COURT: Thank you, gentlemen. The other
12 order I have not signed, but because it's it referred to
13 case 1112, we are just going to file that in case number
14 1112.

15 Thank you very much.

16 MR. KOPPENHOEFER: Thank you, Your Honor.

17 THE COURT: Have a good day.

18 MR. LANGBAUM: Before we go off the record,
19 that file I handed to you was signed by the Clerk's Office
20 to me. Ought to take it back?

21 THE COURT: No, we'll take it back.

22

23

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24

CONCLUSION

25

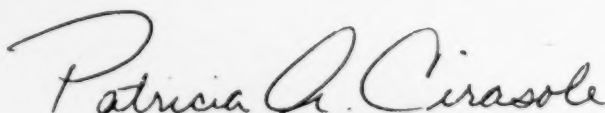
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REPORTER'S CERTIFICATE

I, Patricia A. Cirasole, an Official Court Reporter of the Circuit Court for Baltimore County, Maryland, do hereby certify that I stenographically recorded the proceedings in the matter of C. Raymond Dietz and Ethel M. Dietz versus State of Maryland, Comptroller of the Treasury, Income Tax Division, Case Number 88-CG-1111 and 88-CG-1112 on May 4, 1989 before the Honorable Joseph F. Murphy, Jr., Judge.

I further certify that the pages numbered 13a through 34a herein correspond to pages one through twenty-two, and constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 15th day of August, 1989.

A handwritten signature in cursive script that reads "Patricia A. Cirasole". The signature is written in dark ink and is positioned above the printed name and title.

Patricia A. Cirasole
Official Court Reporter



**ORDER OF THE COURT OF APPEALS
OF MARYLAND OF 26 MAY, 1989 CASE NOS. 767 & 768
DENYING APPELLANTS' PETITION
FOR A WRIT OF CERTIORARI**

Charles Raymond Dietz, et ux.

v.

Comptroller of the Treasury
Income Tax Division* In the
* Court of Appeals
* of Maryland
** Petition Docket No. 25
* September Term, 1989
* (No. 767-68,
* September Term, 1988
* Court of Special Appeals)
*

* * * * *

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of the answer and reply of petitioner to answer filed thereto, Special Appeals in the above entitled case, it is

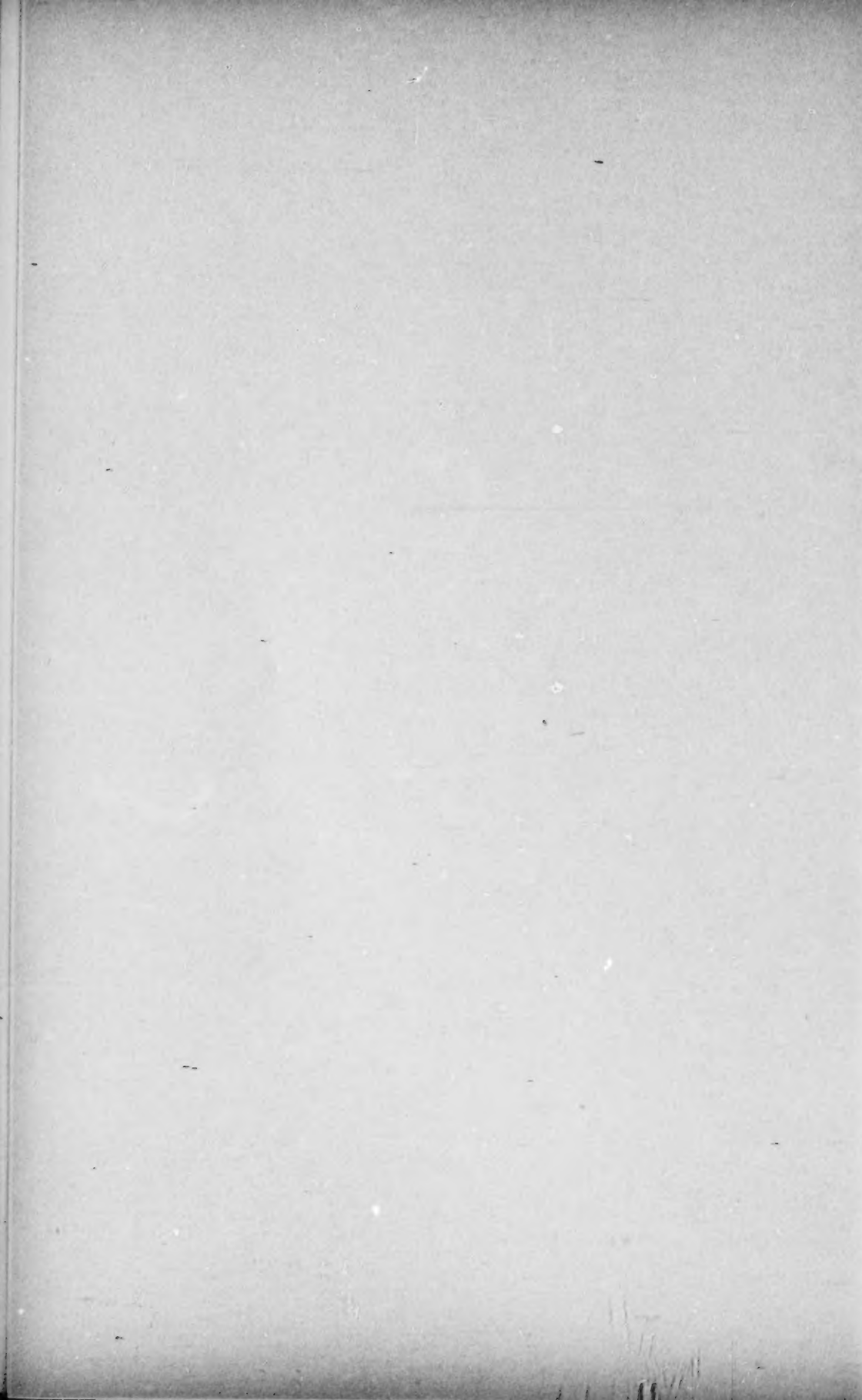
ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: May 26, 1989



**TRANSCRIPT OF (SELECTED PORTIONS)
OF THE ORAL FINDINGS AND DECISION
OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND
OF 20 OCTOBER, 1987**



STATE OF MARYLAND	*	IN THE
COMPTROLLER OF THE	*	CIRCUIT COURT
TREASURY	*	FOR
INCOME TAX DIVISION	*	BALTIMORE COUNTY
VS.	*	MARYLAND
C. RAYMOND DIETZ &	*	
ETHEL M. DIETZ	*	

* * * * *

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEDURES

Towson, Maryland
October 20, 1987

Before:

HONORABLE JOHN F. FADER, II, ASSOCIATE JUDGE

APPEARANCES

On Behalf of the State:

GERALD LANGBAUM, ESQUIRE

On Behalf of the Defendants:

STEPHEN P. BOUREXIS, ESQUIRE

Reported by:

PATRICIA A. CIRASOLE
Official Court Reporter
401 Bosley Avenue, M-11
Towson, Maryland 21204

(PAGE 8 OF ORIGINAL TRANSCRIPT)

1 other constitutional infirmity.

2 MR. LANGBAUM: Let me be candid to the Court.

3 1985 will prove to be a different problem for the reason Mr.
4 Dietz chose not to contest 1985.

5 THE COURT: But see, I don't know any of that. He
6 is saying, look, he's saying, I have been denied my right to a
7 hearing. Now, how do I know? The only thing I know is that if
8 I look down at you and you say, no, he hasn't, and I look down
9 at him and he says, yes, he has, let's see, you got a red tie
10 on, so it's you I choose, the Court of Appeals is going to say,
11 reversed. You need evidence.

12 MR. LANGBAUM: You have a right to rely on the
13 duly recorded lien of judgment. If we were Hecht Company --

14 THE COURT: I am sorry sir. When I find as a
15 matter of law when a contest is generated, I will not rely on
16 anything that's been generated by an attorney or manager of the
17 Comptroller from the Treasury. Government has a responsibility
18 to deal more fairly with its people than that. All I am asking
19 you to do for 1983, -- how many years in question are they?

20 MR. LANGBAUM: Today there are two years. I'll be
21 able to do what you are asking for 1983; I will not be able to
22 in 1985, because he slept on his rights, never contested it.

23 THE COURT: If that's so, then you can show me
24 that's so, then it's a final judgment. Because the law requires
25 a specific procedure. You send an individual the copy of a

(PAGE 9 OF ORIGINAL TRANSCRIPT)

1 notice of a lien. If the individual doesn't contest it within a
2 period of time, then it becomes final. Is that not so? Is that
3 not what the law says?

4 MR. LANGBAUM: Yes, Your Honor, that is the law.

5 THE COURT: Then it seems to me if he is saying, I
6 haven't been given notice of all of these things --

7 MR. LANGBAUM: That's not what he's saying.
8 That's not what he's saying at all, Your Honor. He's saying I,
9 I don't know the tax.

10 MR. BOUREXIS: We are not at that issue at this
11 point.

12 MR. LANGBAUM: I would ask Your Honor to ask the
13 question. -

14 THE COURT: Are you at an adjudicatory issue?

15 MR. BOUREXIS: Yes. Your Honor, if the Court
16 please, I believe the heart of this case is what exactly you are
17 putting your finger on at this point in sharing with the State,
18 by what authority do you ask me to rule on a judgment, pardon
19 me, on a document that's been filed by the Comptroller of the
20 Treasury's office, signed, of course, by these two, I am sure,
21 well qualified individuals.

22 THE COURT: I rule as a matter of law somewhere
23 down the line, some Court and more authority than me is going to
24 say, don't do it. Government has more responsibility in dealing
25 with these people. But what Mr. Langbaum has said, and I very

(PAGE 36 OF ORIGINAL TRANSCRIPT)

1 property, because if we levy on the property, it would cause Mr.
2 Dietz some harm. Well, I'll be the first to say if we levy on
3 the property, it will cause him some harm. Harm is caused to
4 any person who owes money and doesn't pay it, when the creditor
5 gets around to trying to collect it. The appropriate legal
6 remedy, Your Honor, is not to bar the creditor from collecting
7 money that the creditor is due; it's to tell the debtor to pay
8 the money that's due. I think Mr. Dietz would be well served by
9 that sort of advice.

10 We should not be enjoined. We are entitled to this
11 money. The people of the State of Maryland are entitled to this
12 money. He owes the money. Everybody else pays; why is he
13 something special? Because he filed Exhibit Three, that
14 basically says, poof, I am no longer a taxpayer. That is really
15 his case, your Honor, and it's no case at all.

16 MR. BOUREXIS: If the Court please, just in a
17 final point of Section 322, talking about the Court's
18 responsibility without a Jury to adjudicate, shall adjudicate
19 all matters, I believe there are basically two cases in the
20 county that have gone to the highest courts of those states
21 dealing with the issue of this lien judgment theory, which
22 basically say, in all candor to the Court, it does say the
23 process, if there's an adjudicatory process.

24 THE COURT: You know I disagree with Mr. Langbaum
25 that, in fact, there is no question but that this statute

(PAGE 37 OF ORIGINAL TRANSCRIPT)

1 requires that Mr. and Mrs. Dietz be made a party to this. Now,
2 I have no question in my mind but that if the statute did not
3 require it, due process of law would require it. Because there
4 must be, because there are only two ways that property may be
5 sold without court investigation. First of all, a secured
6 creditor under the uniform special code may sell property
7 without court intervention and secondly, no, I mean that's the
8 only one, the old chattel mortgage. But, otherwise, you have to
9 come to court. In order to come to court, except in mortgage
10 foreclosure cases, where a notice under W-74 must be given, some
11 sort of a notice must be given to the people of the fact that a
12 proceeding is pending to foreclose their rights on property or
13 to execute on the judgment. This is exactly what the statute
14 says. If it didn't say it, due process is going to take over
15 and say it.

16 But in this particular case, although I don't think the
17 State has done what they are supposed to do, you are here, you
18 made a general appearance. You have said everything that you
19 want to say, he said everything he can say, and it just seems to
20 me that the law is not going to require the exercise of a
21 futility, namely me telling him, go back, serve him correctly.
22 I am not even so sure he has to serve you, see, because it says
23 any part shall be made a party. Does that mean he has to serve
24 you? If I were Comptroller, I would do that. That may also
25 mean all he has to do is send you a notice by mail. I don't

(PAGE 38 OF ORIGINAL TRANSCRIPT)

1 know. But it doesn't matter in this case, you are here and you
2 had your say.

3 MR. BOUREXIS: That's the basis in which we would
4 respectfully suggest to the Court all of the issues presented to
5 you we feel are appropriate for your consideration. Thank you.

6 THE COURT: All right, sir. Well, again, I have
7 said everything I wanted to say with regard to the issue of
8 service of process, naming people as parties, opportunity for
9 due process and to adjudicate in this case. And a full hearing
10 has been had on the merits.

11 I will indicate and the Clerk will rule or put a ruling
12 that the motion to release property, which is filed today, is
13 denied, and that the Court determines that both the '83 and '85
14 assessments are final. It's clear to me from the exhibits that
15 have been produced that the gentleman, first of all, did not
16 appeal to the Tax Court. And secondly indicated in later
17 correspondence that to do so would be to subject himself to a
18 procedure of the State for adjudication, which he does not
19 recognize.

20 Now, the collection of taxes as well as other
21 government functions is a very involved one. The procedure is
22 specifically set forth in the statute. The statute gives the
23 Comptroller the authority to assess and says that the assessment
24 is final if there is no contest. There wasn't any in this
25 particular rebuttal. And I rule that the assessment is final.

(PAGE 40 OF ORIGINAL TRANSCRIPT)

1 law. Don't try to look for excuses. If he does it, he does it.
2 If he doesn't do it, he loses. And that's their decision and
3 the appellate court decision is not to vest from the judiciary
4 the authority to show excuse, but rather to indicate if the
5 procedures have not been followed. In other words, Mr. and Mrs.
6 Dietz have not afforded themselves of the opportunity to go to
7 the Tax Court. It matters not that they didn't feel that they
8 had the right to do that. It matters not whether I feel they
9 should; but the statutory direction is to be obeyed. I think
10 your client lost their right to go to the Tax Court, the
11 adjudication of the Comptroller became final and I have so ruled
12 in this particular regard.

13 I will order that the property be sold within 60 days
14 of today's date or that the lien, the levy, that I will
15 entertain a motion to set aside the levy. Seems to me that's
16 fair, unless you want more time.

17 MR. BOUREXIS: May I have just a second, Your
18 Honor?

19 THE COURT: Sure. If you want more time, it
20 wouldn't be to your detriment.

21 MR. BOUREXIS: Your Honor, I requested or I have
22 asked Mr. Dietz and he respectfully requests, if the Court
23 should make a ruling as it's making the ruling in this matter,
24 that he be given 90 days.

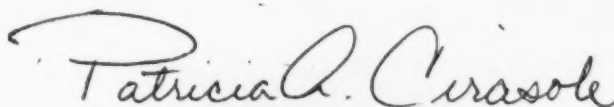
25 THE COURT: I'll be glad to say within 90 days.

REPORTER'S CERTIFICATE

I, Patricia A. Cirasole, an Official Court Reporter of the Circuit Court for Baltimore County, Maryland, do hereby certify that I stenographically recorded the proceedings in the matter of C. Raymond Dietz and Ethel M. Dietz versus State of Maryland, Comptroller of the Treasury, Income Tax Division, on October 20, 1987 before the Honorable John F. Fader, II, Judge.

I further certify that the pages numbered 43a through 49a herein correspond to pages one, eight, nine, thirty-six thirty-seven, thirty-eight, and forty, and constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 15th day of August, 1989.

A handwritten signature in cursive script, reading "Patricia A. Cirasole". The signature is written in dark ink and is positioned above the printed name and title.

Patricia A. Cirasole
Official Court Reporter

**WRIT OF EXECUTION FROM
CIRCUIT COURT FOR BALTIMORE
COUNTY, MARYLAND OF 16 JUNE, 1987**



CIRCUIT COURT FOR BALTIMORE COUNTY

SUZANNE MENSCH, CLERK
 COUNTY COURTS BUILDING
 401 BOSLEY AVENUE
 P. O. BOX 6754
 TOWSON, MARYLAND 21204-0754

WRIT OF EXECUTION

State of Maryland Comptroller of the
Plaintiff/Judgment Creditor
Treasury Income Tax Division
Income Tax Bldg.

Address

Annapolis, Md. 21411

Vs.

Charles R. & Ethel M. DietzDefendant/Judgment Debtor1838 Ellinwood Road

Address

Balto., Md. 21237

Case Number MTL 48/222

Amount of Judgment Owed:

\$7,616.63Clerk's Fee \$ 85.00Other Costs \$ Interest From 6/18/86 \$

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: SHERIFF OF Baltimore COUNTY:

You are hereby directed by levy upon the property of the Judgment Debtor to satisfy a money Judgment in accordance with the attached instructions.

TO THE JUDGMENT DEBTOR:

You are hereby notified that Federal and State exemptions may be available to you, and you have a right to move for the release of the property specified in the Sheriff's schedule from the levy.

WITNESS the Honorable Chief Judge of the Third Judicial Court of Maryland

Date Issued June 16, 1987

Clerk Suzanne Mensch

SHERIFF'S RETURN:

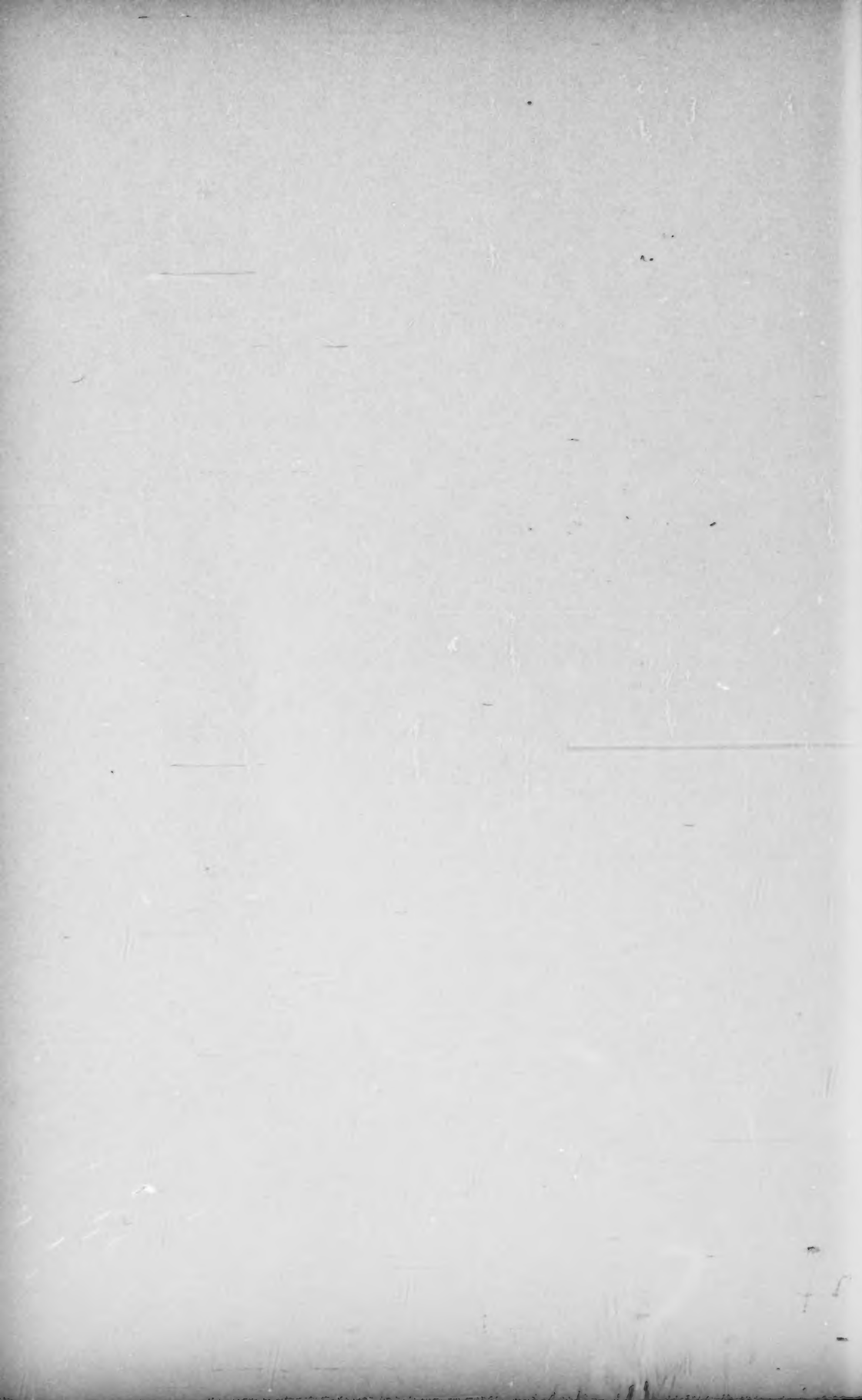
8-17-87 Copy Left Levy madeFEE \$ 15.00

SHERIFF J. Edward Malone

NOTE: Execution of this writ shall be in accordance with Md. Rule 2-642.



**PETITION FOR WRIT OF CERTIORARI
MARYLAND COURT OF APPEALS,
CASE NOS. 767 & 768,
OF 12 MARCH, 1989**



Charles Raymond Dietz	*	
Ethel M. Dietz	*	
Appellants	*	Case Nos.: 767 & 768
vs.	*	
Comptroller of the Treasury	*	Maryland
Income Tax Division	*	Court of Appeals
State of Maryland	*	September Term, 1988
Appellee	*	
	*	

* * * * *

PETITION FOR WRIT OF CERTIORARI

Charles Raymond Dietz and Ethel M. Dietz, Appellants, in proper person, petition the Court of Appeals for a Writ of Certiorari to review the decision of the Court of Special Appeals, a copy of which is attached hereto, dated January 25, 1989. The date of the issuance of the mandate of the Court of Special Appeals is February 24, 1989.

Questions Presented

1. Did the Court of Special Appeals err when they failed to rule on the due process issue which Appellants raised because "...it is not fairly generated by the facts of this case" (page 2 of decision from Court of Appeals, attached)?
2. Did the Court of Special Appeals err in upholding the judgment of condemnation absolute in the absence of a money judgment from a court of law properly recorded and indexed as required prior to sale?

Statement of Facts

Appellants Charles Raymond Dietz and Ethel M. Dietz were the Defendants in a legal action brought by the Comptroller of the Treasury, Income Tax Division seeking Judgment of

Condemnation Absolute for Assets Confessed in Garnishment on Judgment. The assets in question were proceeds held by the Sheriff of Baltimore County as a result of the sale of Appellants' home conducted without the basis of a recorded money judgment.

The origins of this matter are certain income tax assessments which were deemed by Judge John F. Fader II on Oct. 20, 1987, to be final assessments as the result of previous litigation. The finality of the income tax assessments are not at issue here. The Appellants concede the existence of Maryland income tax liens (claims) filed in the Circuit Court for Baltimore County prior to the sale of Appellants' home which were also the subject of litigation. The issue contested by the Appellants is the failure of Appellees to provide due process to Appellants through a hearing in a Court of Law to contest the validity of the liens or assessments prior to sale of family residence to satisfy same.

On February 16, 1988, the Appellants' longtime family residence was sold by the garnishee in the lower court action, the Sheriff of Baltimore County. The Baltimore County Sheriff in fact sold Appellants home based solely upon the existence of the (challenged) income tax assessments and the Maryland tax liens which had been previously filed. The Appellee then sought and obtained an order from the Circuit Court for Baltimore County Directing the garnishee pay over to the Appellee partial proceeds of the sale amounting to the final income tax assessments/liens previously filed with the Court without ever having sought a money judgment as required by law.

Argument

THE COURT OF SPECIAL APPEALS ERRED IN FAILING TO ADDRESS THE DUE PROCESS ISSUE BASED ON THEIR INCORRECT ASSUMPTION THAT THE DUE PROCESS ISSUE RAISED BY APPELLANTS WAS "...NOT FAIRLY GENERATED BY THE FACTS OF THIS CASE."

The Maryland Rules of Procedure clearly define what is a "judgment" as a matter of law. See Rule 2-601. Entry of Judgment, Maryland Rules of Procedure. The first sentence of Rule 2-601 (a) defines a judgment in terms of a general jury verdict or a court decision in a nonjury case, and establishes three classes of judgments; (1) recovery only of costs, or (2) a specified amount of money, or (3) denying all relief. The second sentence of Rule 2-601 (a) also provides that judgments shall be entered by the clerk of the court in the event of a special verdict by a jury or "upon a decision by the court granting other relief." See Rule 2-601 (a), Maryland Rules of Procedure.

Rule 2-601 (a) defines different types of proceedings which might result in a judgment. Each of these proceedings are familiar types of court proceedings, which include both general and special jury verdicts, court decisions awarding relief in costs and/or a specified amount of money, or "other relief" which might be granted by the court. The rule contemplates here the type of judgments historically entered by a court as derived from equity.

Each of the types of proceedings set forth stems from legal causes of action with certain common characteristics. These are actions in which a Plaintiff seeks relief from a court based upon a legally recognized cause of action, and assumes a burden of proof with respect to the facts of the case. The Defendant in a cause of action which might result in a judgment is able, as an inherent right to due process, to contest issues of both fact and law, as well as constitutional rights such as the right to a jury trial.

The Maryland Rules of Procedure further set forth the circumstances under which a writ of execution is to be issued. Rule 2-641, Maryland Rules of Procedure. Rule 2-641 (a) provides in pertinent part: "Upon a written request of a judgment creditor, the clerk of a court where the judgment was entered or is recorded shall issue a writ of execution directing the sheriff to levy upon property of the judgment debtor to satisfy a money

judgment." (emphasis added)

Maryland Rule 2-641 therefore provides for issuance of a writ of execution and action by the sheriff pursuant thereto only under certain circumstances. According to Rule 2-641 there must be three factors present; (1) a judgment creditor, (2) a judgment debtor, and (3) a money judgment (emphasis added). In the instant action, each of the three factors required for a writ of execution were absent. (emphasis added)

The Appellee in the instant action was not a judgment creditor nor are the Appellants judgment debtors. Maryland Rule 2-601 defined a judgment in terms of jury or nonjury court proceedings including the traditional equitable jurisdiction of the courts. At no time has the Appellee obtained a judgment as defined by Maryland Rule 2-601 such as would entitle him to be a judgment creditor entitled to a Writ of Execution as provided by Maryland Rule 2-641.

The Court of Special Appeals erred in saying (on page 5 of the Mandate) the "...Judge Fader finally assessed these liens." (emphasis added). In fact, no written order issued from Judge Fader's court. In his hearing, which was supposed to (but in fact failed to) address Appellants' right to due process in their contest of the validity of the assessments. Again, Judge Fader's serious concerns as to the failure of the Comptroller to grant Appellants' due process was expressed distinctly on two different occasions (transcript, page 37) wherein Judge Fader stated, "Now, I have no question in my mind, but that if the statute did not require it, due process of law would require it. -- If it didn't say it, due process is going to take over and say it." In sharp contrast to the Court of Special Appeals decision wherein they state, "...the due proces issue... is not fairly generated by the facts of this case," it is clear that Judge Fader himself raised the due process issue in defense of Appellants argument. It is also clear from the lack of written order being issued from Judge Fader's court the only thing that was determined by the hearing in Judge Fader's court was the finality of the

assessment and not, in fact, their validity. The validity of the assessment, in correct with due process, has never been granted to the Appellants. Clearly the brief to the Court of Special Appeals repeatedly called for due process as the central issue for adjudication. The non-existence of any order from Judge Fader's hearing proves the invalidity of any "docket entry" which may have been made by a clerk in the clerk's office absent a written order from Judge Fader. In fact, the only conclusion, absent any written order, which came from the hearing in Judge Fader's court was the finality of the assessments. Hence the Court of Special Appeals erred when they stated, "The fact that Judge Fader had not signed an order which the Comptroller had submitted for sale in 90 days was not critical." Appellants contend that the lack of any written order from Judge Fader clearly means that the entire hearing was valuable only as dicta - not as law. Again, the Fader hearing did not satisfy Appellants right to due process in his challenge to the validity of the assessments.

The provisions of Maryland Rule 2-641 as to the issuance of a writ of execution are clear. In addition to requiring a judgment creditor and a judgment debtor, Rule 2-641 (a) requires the existence of a money judgment. This legal requirement is entirely consistent with Rule 2-601. Rule 2-601, as previously stated, encompasses money judgments as well as "other relief". The Rule requires that a money judgment be for a specified amount of money, which is entirely consistent with established legal practice as well as the writ of execution provisions of Rule 2-641. The intent of the specification of the term money judgment in Rule 2-641 is to exclude the "other relief" type of judgments from its writ of execution provisions.

Therefore, a writ of execution as provided by the Maryland Rules shall only be issued following a judgment, which in turn may only be entered by a jury or a court. Furthermore, a writ of execution may only be properly issued as a result of a money judgment, further limiting the type of nonjury court decision which could form the basis for a writ of execution.

In the instant action, the Appellants were subjected to a writ of execution in the absence of a money judgment. A final tax assessment is not a money judgment since the administrative process is entirely different from the judicial process. A judgment is defined by Maryland Rule 2-601 entirely in terms of a judicial proceeding, whether a jury trial resulting in a general or special verdict, a nonjury court decision allowing recovery of costs or a specified amount of money, or denying relief, or a court decision granting "other relief". The last example, although a type of judgment as defined by Rule 2-601, is not pertinent to the issue since it is not a "money judgment" as defined by Maryland Rule 2-641.

The issuance of the writ of execution and the sale of the Appellants' home pursuant to its issuance was outside the scope of authorization provided by the Maryland Rules of Procedure. Maryland law has traditionally looked to the Maryland Rules of Procedure as the basis of legal authority on the issue of the legally mandated sale of property. See Van Royen v. Lacey 262 Md. 94, at 100, 277A. 2d 13 (1971).

A subsequent opinion from the Court of Appeals of Maryland also defines the lien against real property which provides the basis for a writ of execution in terms of a "final judgment of a court". See Franzen v. Dubinok, 290 Md. 65, at 70, 427 A. 2d 1002 (1981).

Maryland law explicitly provides a thorough and detailed statutory scheme which provides for the sale of real property in satisfaction of certain delinquent tax obligations. The Tax-Property Article of the Annotated Code of Maryland provides a comprehensive and detailed process which carefully balances governmental and private interests. See Md. Ann.Code, Tax-Property Article, Part III. Tax Sales. Sections 14-808, et seq.

The Tax Sales section of the Tax-Property Article of the Maryland Annotated Code provides clear and specific authority

for tax sales of real estate, including homes, when there exists delinquencies in property taxes, section 14-808, Tax-Property Article, Maryland Annotated Code. In addition, the Tax Sales section provides specific methods and procedures for the sale of the realty to satisfy delinquent property taxes. See Sections 14-814 and 14-817, Property-Tax Article, Maryland Annotated Code.

An important distinction exists between the specifically authorized Tax Sales provisions authorized to collect property taxes and the writ of execution procedures utilized by the Income Tax Division of the Comptroller of the Treasury. The Tax-Property Article is limited by its language to taxes on real property. Apparently, the legislature recognized a nexus between the tax and its source, eg. the tax and property taxed.

In the instant action, there exists no such nexus between the tax assessed, an income tax assessment and the source, the Appellants' family home. Furthermore, the right of redemption specifically provided in Section 14-827 of the Tax-Property Article is unavailable.

The Appellee's use of a writ of execution, (without prior procedures of a hearing with an authentic case number and a properly recorded and indexed money judgment), and the subsequent Sheriff's sale of the Appellants' real property is a draconian utilization of governmental power. The Income Tax Division possessed alternative remedies more consistent with the legislative intent evidenced by the Tax-Property Article's nexus between the object of the tax and the source of collection. The Appellee, having declined to pursue these collection alternatives, should be denied the use of the writ of execution.

THE COURT OF SPECIAL APPEALS ERRED SINCE APPELLANTS WERE DEPRIVED OF THEIR FAMILY HOME WITHOUT DUE PROCESS OF LAW.

The lower court relied upon Article 81, Section 322 of the Maryland Annotated Code in its decision granting Judgment of

Condemnation Absolute for Assets Confessed in Garnishment on Judgment in Appellee's favor despite the absence of a money judgment from a court decision.

The United States Constitution, Amendment XIV, provides in pertinent part: "nor shall any State deprive any person of life, liberty, or property, without due process of law". Article 24, Declaration of Rights, of the Constitution of the state of Maryland provides in pertinent part: "That no man ought to be taken or imprisoned or disseized of his freehold, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the Law of the land." To the extent that the Court of Special Appeals read Article 81, Section 322 as authorizing the forced sheriff's sale of the Appellant's family home in the absence of a money judgment pursuant to a court decision, these constitutional provisions are implicated.

The Maryland Constitution more specifically addresses this issue than does the Constitution of the United States. However, the due process clause of the MD Constitution has been hold in parie materie with that of the U.S. Constitution. Article 24 of the Declaration of Rights prohibits either the disseizure of one's freehold or deprivation of property unless there exists a "judgment of his peers" or "by Law of the land". The "judgment" requirement is clearly lacking in the instant action. The Appellees cannot establish a judgment prior to the final income tax assessment, and therefore, Appellants were denied due process of law.

The Appellants concede that the due process provisions of the United States and Maryland Constitutions do not prohibit property deprivation as a general principle. Maryland's foreclosure rules and procedure, for example, has been upheld in the face of feeral and state due process challenges. Billingsley v. Lawson, 43 Md. App. 713, 406 A, 2d 946 (1979). However, there are important distinctions between a mortgage foreclosure and a sheriff's sale. In the mortgage foreclosure situation the

mortgagee seeking foreclosure has some claim of right to the property in the event that facts are adduced to justify foreclosure. The Billingsley Court held that presale-enjoinment provisions and postsale ratification provisions provided the mortgagor with adequate due process. The fundamental distinction that exists in the instant action is that the Appellee has no interest in the Appellants' family home in the sense that a mortgagee has a legal interest in the event of default. In the instant action, the Appellee is fundamentally a stranger to the transaction, and the Appellants are therefore entitled to greater rights than in Billingsley.

Article 81, Section 322, or any other section which the Appellee seeks to rely upon, should not be interpreted as to allow issuance of a writ of execution upon the Appellee's family home. Such an interpretation would violate the "law of the land" provision of the Maryland Constitution's Article 24 and the due process clause of the 14th Amendment of the U.S. Constitution. Maryland statutory law specifically addresses the issue of the forced sale of real property in satisfaction of tax delinquencies and clearly failed to empower the Income Tax Division pursuant to the Tax-Property Article of the Maryland Annotated Code. The Maryland Rules of Procedures specifically authorize issuance of a writ of execution pursuant to a money judgment from a court of law, either the Circuit or District court, if properly recorded and indexed.

The more general provisions of Article 81 concerning revenue collections ought to be harmonized with more specific and detailed provisions of the Maryland Annotated Code and the Maryland Rules of Procedure. The broad sweep of governmental powers implicit in the lower court's decision would unduly deprive families of their most precious property without the legal protections afforded a citizen prior to entry of a judgment from a court of law, or the protections afforded by the redemption provisions of the Tax-Property article.

Accordingly, the Court of Special Appeals erred in granting

Judgment of Condemnation Absolute in favor of Appellee.

SPECIAL ALERT AND NOTICE

For this Court to uphold the Court of Special Appeals affirmation would establish a singular denial of due process as respects any and all bureaucratic determinations as though the judicial power for affirmation of their tax assessments was mysteriously bestowed upon the executive branch, usurping the clear responsibility of the judiciary. Their affirmation cloaks the executive branch with omniscient powers to abrogate and usurp the singular and constitutional authority solely delegated to the judicial branch of government.

Conclusion

Accordingly, for the foregoing reasons, Appellants respectfully requests that the Court of Appeals grant this Petition for a Writ of Certiorari.

Date: March 12, 1988

Respectfully submitted,

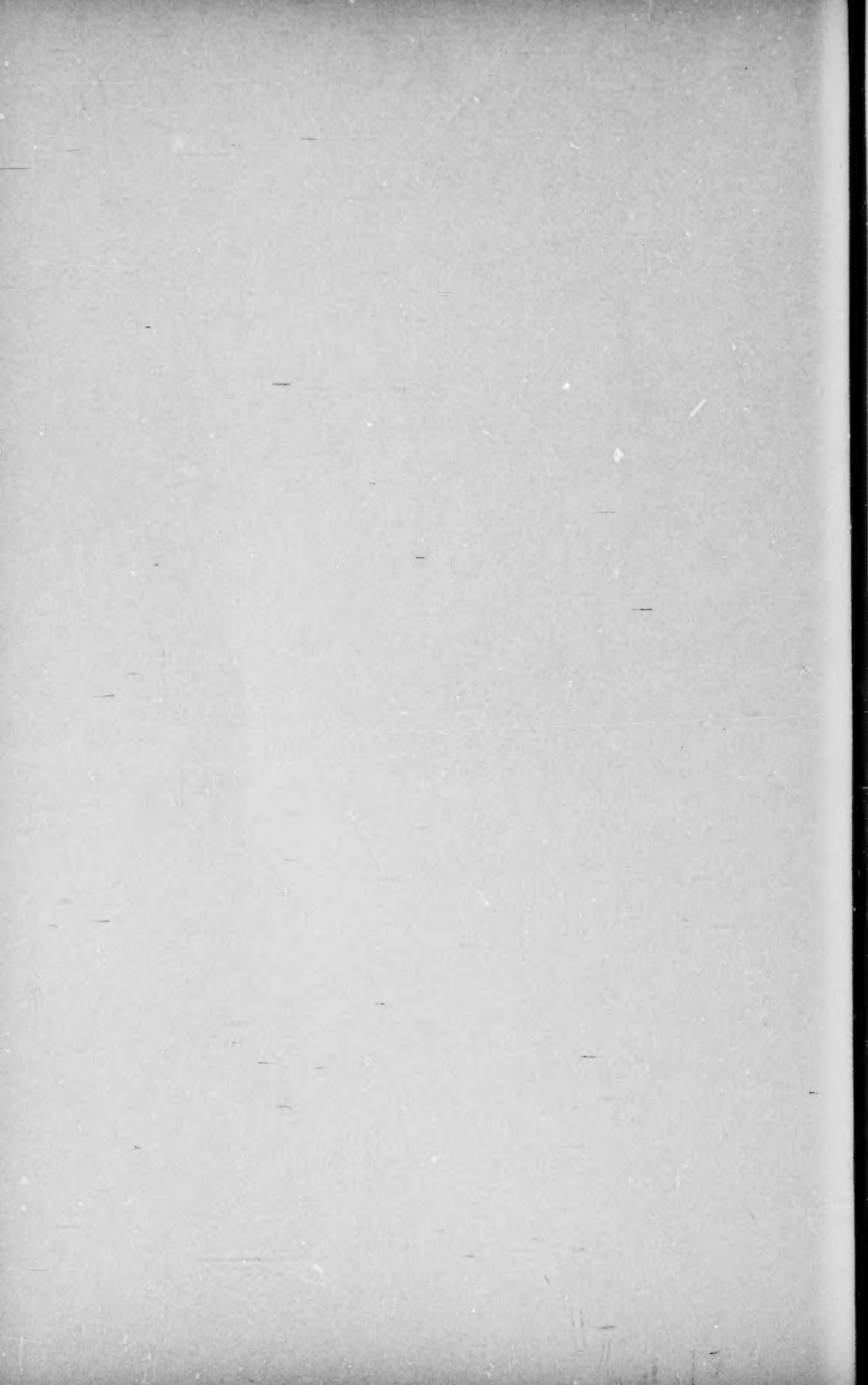
Charles Raymond Dietz

Charles Raymond Dietz in proper person
1838 Ellinwood Road
Baltimore, MD 21237
(301) 866-4822

Ethel M. Dietz

Ethel M. Dietz in proper person
1838 Ellinwood Road
Baltimore, MD 21237
(301) 866-4822

**PETITIONERS RESPONSE TO THE
RESPONDENT'S ANSWER TO PETITION
FOR WRIT OF CERTIORARI MARYLAND
COURT OF APPEALS, CASE NOS. 767 & 768
OF 29 MARCH, 1989**



Charles Raymond Dietz	*	
Ethel M. Dietz	*	
Appellants	*	Case Nos.: 767 & 768
vs.	*	
Comptroller of the Treasury	*	Maryland
Income Tax Division	*	Court of Appeals
State of Maryland	*	September Term, 1988
Appellee	*	
	*	

* * * * *

PETITIONERS' RESPONSE TO THE RESPONDENT'S ANSWER
TO PETITION FOR WRIT OF CERTIORARI

The last sentence on page 3 of respondent's ANSWER TO PETITION FOR WRIT OF CERTIORARI which makes the claim that the document executed by an employee of the Comptroller's office has the same force of law as a money judgement, which must come from a court of law, is in effect a claim that the legislature has endowed the employees of an administrative agency with the same authority as a court of law. If such a claim were true, the constitutionally secured right not to be deprived of property without due process in a court of law would be effectively nullified and the constitutional protections of citizens rights in the United States Constitution which were extended by the provisions of the 14th Amendment of the United States Constitution in their dealings with the States, would be rendered meaningless. It is inconceivable that the Maryland legislature intended to attempt to give the employees of an administrative agency the authority to avoid the constitutional requirement for citizens to have the right to due process.

In that sentence, the respondent's allegation that the petitioners cannot and do not contest the existence of "the lien itself" is clearly a false allegation as evidenced by the Dietzes affidavits which were submitted to the office of the Comptroller on May 28, 1986, prior to the issuance of the "notice of lien" form recorded in the court records and entered into evidence in the

proceeding conducted by Judge Fader, but which was not addressed by any order or ruling of Judge Fader. The petitioners have challenged the validity of the claim of the Comptroller from prior to the time of the filing of the "notice of lien" form in the court records. There has never been a suit filed against the Dietzes in a court of law resulting in a money judgement from the court of law wherein the petitioners' challenge to the validity of the alleged assessment could be lawfully adjudicated.

To uphold the Comptroller's claim to have the authority to have the petitioner's real property taken and sold without their having the opportunity to have their challenges to the validity of the Comptroller's claim adjudicated to a court of law would violate their right to due process. We respectfully ask that the Court set aside and nullify the Writ of Execution, the Sheriff's levy and the subsequent sale of the property on the grounds that the petitioners were never given due process of law.

Respectfully submitted,

Charles Raymond Dietz

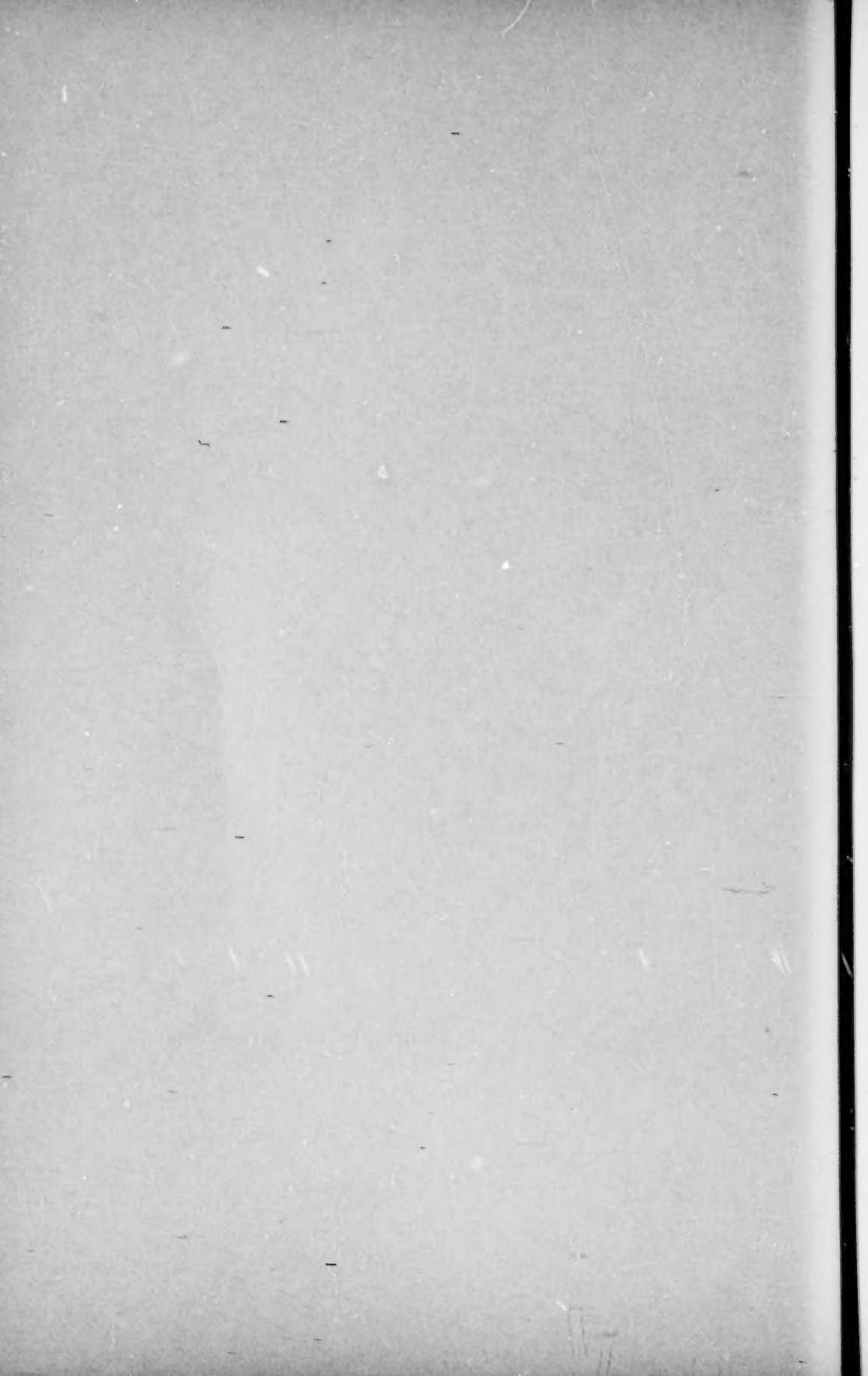
Charles Raymond Dietz in proper person
1838 Ellinwood Road
Baltimore, MD 21237

Ethel M. Dietz

Ethel M. Dietz in proper person
1838 Ellinwood Road
Baltimore, MD 21237

29 March 1989

**NOTICE OF PETITION
FOR WRIT OF CERTIORARI**



Nos. 767 & 768

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 1988

Charles Raymond Dietz, *et alia*, *Appellants*,

v.

Comptroller of the Treasury,

Income Tax Division

State of Maryland, *Appellee*.**NOTICE OF PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES**

Notice is hereby given that Charles Raymond Dietz, et ux., petition the Supreme Court of the United States for Writ of Certiorari from the final judgment of the Court of Special Appeals of Maryland entered in this action on 25 January 1989.

The decision of the Court of Special Appeals denied petitioners' due process of law in violation of the United States Constitution by misconstruing the clear legislative intent of Section 322 of Article 81 of The Annotated Code of Maryland. The sale of the petitioners' home on 16 February 1988 was based upon an unlawful Writ of Execution issued on 16 June 1987 without basis of a money judgment of record.

This appeal is taken pursuant to Title 28, United States Code, Section 1257(2) and under rules 10 and 12 of the Rules of this Court.

Charles Raymond Dietz

Charles Raymond Dietz
1838 Ellinwood Road
Baltimore, MD 21237
(301) 866-4822
(301) 278-6452

In Propria Personna

[Certificate of Service omitted in printing]

(See page 75a for date of submittal
to Court of Special Appeals)

[Received Court of Special Appeals of Md. 1989 August 17
AM 11:06 L. D. Gradet, Clerk

Nos. 767 & 768

**IN THE
COURT OF SPECIAL APPEALS OF MARYLAND**

September Term, 1988

Charles Raymond Dietz, *et alia*, *Appellants*,

v.

Comptroller of the Treasury,

Income Tax Division

State of Maryland, *Appellee*.

**NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES**

Notice is hereby given that Charles Raymond Dietz, et alia, appeal to the Supreme Court of the United States from the final judgment of the Court of Special Appeals of Maryland entered in this action on 25 January 1989.

The decision of the Court of Special Appeals denied appellants' due process of law in violation of the United States Constitution by misconstruing the clear legislative intent of Section 322 of Article 81 of The Annotated Code of Maryland. The sale of the appellants' home on 16 February 1988 was based upon an unlawful Writ of Execution issued on 16 June 1987 without basis of a money judgment of record.

This appeal is taken pursuant to Title 28, United States Code, Section 1257(2) and under rules 10 and 12 of the Rules of this

Court.

Charles Raymond Dietz

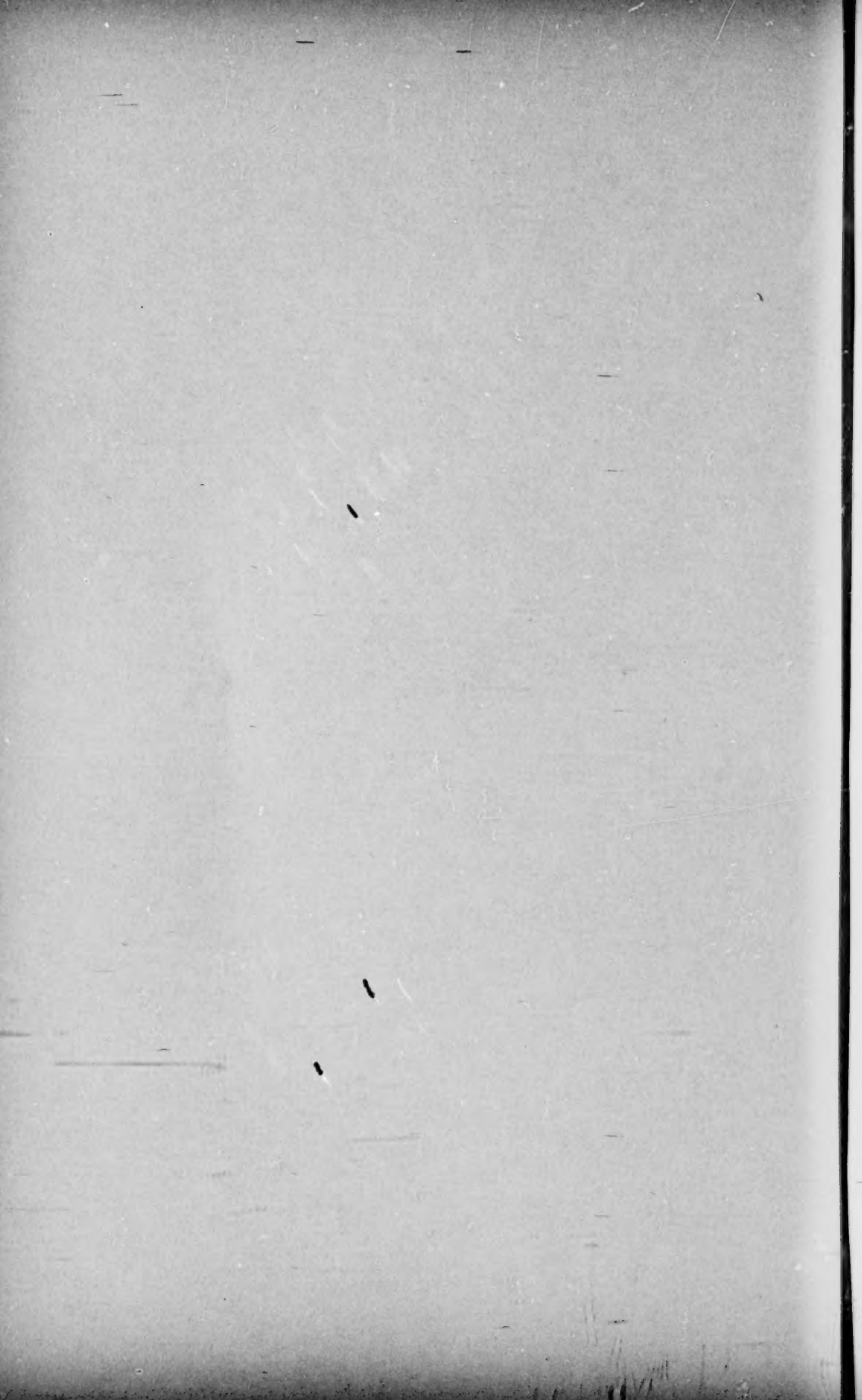
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In Propria Personna

[Certificate of Service omitted in printing]

NOTE: This was the form originally submitted but on advice from Mrs. Suzy McDivitt, clerk of the Supreme Court, appeal was changed to Petition for Writ of Certiorari to The Court of Special Appeals of Maryland and this notice is re-formatted thusly on pages 73a and 74a. It was subsequently resubmitted to the Clerk of the Court of Special Appeals.

**TEXTS OF STATUTES
FROM ARTICLE 81: THE ANNOTATED CODE
OF THE PUBLIC GENERAL LAWS OF MARYLAND**



**ARTICLE 81: THE ANNOTATED CODE OF
THE PUBLIC GENERAL LAWS OF MARYLAND**

**Section 322. Tax a lien in favor of State on all property,
salary and wages of delinquent taxpayer.**

(1) *Lien for amount, penalty and interest.* --- If any taxpayer shall fail to pay any tax or any installment of any tax due under this subtitle, on or before the date fixed for its payment, the full amount of all such tax due the State, together with any interest, penalty, additional amount or addition to said tax, including in each case a delinquent fee of five dollars (\$5.00), shall be a lien in favor of the State upon all property and all rights to property, real or personal, belonging to such person.

(2) *Time lien arises.* --- Unless another date is specified by law, the lien arising at the date of nonpayment as in this section specified and provided for, shall continue until the liability for the amount thereof is satisfied or until the Comptroller, in his discretion, shall release the lien because of lapse of time or because such lien is uncollectible.

(3) *Notice and judgment.* --- Notice of such lien may be filed by the Comptroller with the clerk of the circuit court of the county in which said property is located, or if located in Baltimore City, with the clerk of the Superior Court of Baltimore City. Each clerk of court shall accurately and promptly record and index all such notices of lien filed with him by the Comptroller and shall enter such lien in the judgment docket of the court stating the

name of the delinquent taxpayer, the amount of the lien and the date thereof. From the time such lien is filed with the clerk of the court of the jurisdiction in which the property covered by the lien is located and indexed as herein prescribed, such lien shall be superior to that of any subsequent mortgages [mortgagee], pledges [pledgee], purchaser or judgment creditor, and shall have the full force and effect of lien of judgment. The lien of any mortgagee, pledgee, purchaser or judgment creditor which became perfected as against third persons, prior to the filing of notice of the State's lien with the clerk, shall be preferred to the lien of the State, provided that such mortgagee, pledgee, purchaser or judgment creditor took and perfected his lien without actual notice or knowledge of the existence of the lien of the State.

(4) *Civil procedure by attachment, garnishment, execution, etc.* --- In any case where a notice of lien has been filed by the Comptroller and indexed, as herein provided, and the full amount of the lien and judgment is not paid the State within fifteen (15) days after filing, the Attorney General, at the request of the Comptroller, or any qualified attorney who is a regular salaried employee of the Comptroller's office shall file a civil proceeding by way of attachment, execution or otherwise in any of the courts of this State or may proceed by way of an equitable proceedings [proceeding] to enforce the lien and judgment thereon of the State for tax, interest, penalty, delinquent fee and

costs upon any property and rights to property, real or personal, owned by the delinquent taxpayer, or in which he has any right, title or interest including any property, real or personal, or the income there from held for the benefit of said delinquent taxpayer by any custodian, fiduciary, receiver or trustee, under any deed of trust or trust instrument including a spendthrift trust whether created by will, deed of trust or otherwise. All persons having lien upon, or claiming any interest in the property or rights to property sought to be subjected, as aforesaid, shall be made parties to such proceedings and brought into court. The court, without a jury, shall adjudicate all matters involved in the proceedings, and determine the merits of all claims or liens, and in all cases where the claim or interest of the State is established, may decree a sale of the property or rights to property, and a distribution of any money or proceeds of sale, according to the interests of the parties and the State.

(5) *Lien for salary, wages, etc. - (omitted as not applicable)*

Section 342. Limitation of Actions and Liens.

(a) *Personal Debt; Limitation of actions.* -- The tax imposed by this sub-title and all increases, interests, and penalties thereon shall become, from all the time due and payable, a personal debt of the person liable to pay the same to the State of Maryland. An action may be brought at any time within four (4) years from the

time the tax shall be due and payable by the Comptroller in the name of the State to recover the amount of any taxes, penalties, and interest due under the provisions of this sub-title, but if there is proof of fraud or gross negligence, there shall be no limitation of the period in which the action may be brought. Proof of negligence amounting to twenty-five percent (25%) or more of the tax due shall be prima facie evidence of gross negligence.

(b) *Lien.* -- The tax and all increases, interests, and penalties, real and/or personal of any person liable to pay the same to the State from and after the time when notice has been given that such tax has become due and payable as, provided herein. Notice of such lien shall be filed by the Comptroller with the Clerk of the Circuit Court of the county in which said property is located or, if located in Baltimore City, with the Clerk of the Superior Court of Baltimore City. Each clerk of the court shall accurately and promptly record and index all such notices of lien filed with him by the Comptroller and shall enter such lien in the judgment docket of the court, stating the name of the delinquent taxpayer, the amount of the lien and the date thereof. The lien provided for in this section shall have the full force and effect of a lien of judgment. Unless another date is specified by law, the lien arising at the date of nonpayment as in this section specified and provided for, shall continue with the same force and effect as a judgment lien. Any such lien on personal

property shall not be effective as against an innocent purchaser for value unless the personal property has been levied upon by an officer of a court. Ann. Code, 1951, Section 338; 1947, ch. 281, Section 278; 1949, ch. 465, Section 278 (b); 1958, ch. 91, Section 1; 1969, ch. 426.)